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PETITION NOT PRINTED

IN THE

Supreme Court of the United States

October Term, 1967

[redacted] 62

No. ~~1451 MISC.~~

THOMAS R. KAISER,

Petitioner,

against

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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To: *The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States*

The petitioner, Thomas R. Kaiser, prays that a writ of certiorari shall issue to review a judgment of the New York State Court of Appeals entered December 7, 1967.

Opinions Below

The majority opinion for the New York State Court of Appeals was written by Judge Keating and was concurred in by five Associate Judges. The majority opinion is reported in 21 N.Y. 2d 86 and is reproduced in Appendix A of the brief.

Sure enough, just as Albino predicted, the Gallos were called off whereupon Granello then announced that Holzman owed him $3,500 for his efforts.

According to Holzman (1502, *et seq.*), he gladly paid the $3,500 without complaining to the authorities out of fear for the Gallos. How the $3,500 was divided up between Granello and the Gallos remains one of the mysteries of the decade.

In point of time, the next significant event occurred in 1963 when the appellant, Thomas R. Kaiser, purchased a bar and grill in the Jamaica-Richmond Hill area in connection with which he borrowed a sum of money from Holzman who owned the juke box and shuffle board then in the premises. In return for the loan, Kaiser signed a contract with Holzman, continuing the Holzman machines in the newly purchased bar.

The contact with Holzman was made by Kaiser through Robert Luttman, an employee of Holzman, and the arrangement was typical of those prevailing in the coin machine industry in Metropolitan New York (999-100).

Kaiser admittedly was a long time friend of Dino Conte, who managed or hung out in the Headline Lounge on 43rd Street in Manhattan. It was Conte who introduced Kaiser to Granello in April of 1964 at the Headline Bar. According to Kaiser, he knew Granello as Sally Burns (1887).

In May of 1964, Conte brought up Holzman's name in a conversation and quizzed Kaiser regarding Holzman's private life, his business ventures, partners, the extent of his business holding and enterprises, a well as Holzman's overall financial condition (1916-17).

Kaiser maintained that he knew nothing then about Holzman personally or his private business (1901-1903).

The record (*supra*) is quite clear that as a result of this conversation with Conte and probably at Conte's urgings,

Kaiser used his friendship with Robert Luttman, Holzman's trusted employee, to ferret out the information clearly proving that Irving Holzman by 1964 possessed a very substantial investment in the coin machine industry in the greater New York area. The result of the Kaiser probings established that Holzman was a man of very considerable means. Indeed, Holzman was now placed in the million dollar class by the conspirators.

Kaiser frankly conceded he knew Granello was then contacting Holzman (1922), although he steadfastly denied that he had guilty knowledge that Granello and Conte were using the intelligence gained by Kaiser from Luttman and passed by Kaiser to Conte, to extort $25,000 for the "family" and 25% of Holzman's business for themselves.

The Corpus Delicti

For the reason that Kaiser does not claim that *no* crime occurred or that *no* offense or wrong was committed by Granello or Conte, we shall go directly to the principal items of evidence relied upon to spell out the attempt by Granello to extort $25,000 cash from Holzman and to cut himself in for a quarter of all of Holzman's business.

The prosecution resorted in the first instance to the testimony of the victim, Irving Holzman, (991, *et seq.*) who testified he was both a distributor as well as an operator of coin operated equipment in the Bronx, Manhattan, Kings, Queens, Nassau and Suffolk Counties.

Sometime during the morning of June 4, 1964, Conte came to Holzman's New York office where he introduced himself as a partner of Granello and told Holzman that Granello wanted to see him. Holzman replied if Burns wants to see me, tell him to stop by the office.

Granello phoned Holzman and agreed to have lunch with Holzman at his New York office, but the luncheon never came off.

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Granello phoned Holzman and agreed to have lunch with Holzman at his New York office, but the luncheon never came off.

The weekend came and went and on Monday, June 8, 1964, Holzman left his home in Roslyn as was his custom for his New York office. While on the way to the City, his wife was assaulted in her Roslyn home by a gang of young toughs posing as delivery men.

The fact of the attack was testified to by Holzman's wife, Ruth, (533, *et seq.*) and a neighbor, Ann Rettek, (522) who while walking the dog, saw the attackers and heard Mrs. Holzman's screams for help in her home.

When Holzman arrived at his New York office, he was notified of the assault on his wife and returned immediately to his residence in Roslyn. It was at this point that Holzman learns that Granello has been looking for him so he telephoned Granello who told him that he would not talk to him on his home phone, but that he should go to an outside phone and call him back which he did (1034).

Granello told Holzman that he wanted to see him and that they could have lunch at Charles French Restaurant which Holzman refused to do because of the assault on his wife.

According to Holzman, he now became suspicious, first because Granello suddenly reappeared in his life, and then his wife is mysteriously beaten; so he called Granello and agreed to meet him at Charles French Restaurant that same Monday afternoon.

The meeting took place and Granello immediately volunteered that he learned about Mrs. Holzman's beating from a radio report on the way back to New York Monday morning from his summer place at Greenwood Lake. Further, that if he, Granello, had returned on Sunday (1039):

> "I could have avoided this whole thing because the people I am with are animals."

Continuing Holzman testified Granello declared (1039, 1041, 1041):

"'You know, I hear that you grew into the million dollar class and nobody who gets in that class doesn't have somebody with him.'

He says, 'Even Costello had to give up a piece.'

Q. Did he say who he meant by Costello? A. No, but I assumed that he was talking about Frank Costello. That's the way it sounded.

Q. He said even Costello had to give up a piece? A. Yes.

Q. Go ahead. A. Then he says to me, he tells me that it was me, it wasn't my wife that people came into the house for and gave her that beating, it wasn't my wife they were looking for, *it was me.*

He says, 'They were looking for you' and he says, 'There are certain people who think they should have a piece of you and I figured out that—'

Mr. Bouse: I move it be stricken.

The Court: This is the conversation.

Q. This is Granello saying? A. Yes.

The Court: Overruled.

Q. In other words Granello figured out?

Mr. Bouse: Oh, I didn't understand that this is Granello who figured it out.

Q. This is his actual words? A. Yes, he said, *'I figured out the best thing you do, you come up with $25,000 in cash for the family'* and he says, *'I don't talk about the family to everybody.* I am talking to you about it because I trust you with anything and then *you will give me 25% of all your business,'* and he says, *'I don't mean by building an equity of 25% and I don't mean of a small percentage,'* he says, *'Because Sally Burns pisses away 100 a day'.*" (Italics mine.)

Holzman replied that he would have to think it over; that he had a partner and he could not understand why he had to give $25,000 to some "family" or take in a partner.

As Holzman left the restaurant, he saw Conte at the bar drinking with a redhead.

Holzman now knew he was in real trouble so he immediately reported the threat by Granello to the Nassau County authorities (1043), and with Holzman's permission, Holzman's home phone was monitored.

Pursuant to direction, Holzman called Granello who again advised Holzman to call from an outside phone which Holzman agreed to do. The phone in question was a public pay phone in the Oak Pharmacy nearby the Holzman residence in Roslyn. The calls made from Holzman to Granello from the public pay booth in the pharmacy were all monitored with Holzman's consent. Pursuant to Police direction, Holzman repeated that he would not give $25,000 to the "family".

Conte then called Holzman at Holzman's home and told him to call Granello again, and between Granello and Conte they advised Holzman that Granello could be reached at Patrissey's a restaurant on Mulberry Street in downtown New York or at the Headline Bar.

Holzman pursuant to Conte's direction, then phoned Granello at the Headline Bar to tell him that he could not then meet Granello because of his wife's fear and physical condition resulting from the beating. Holzman stayed in his home through the weekend which takes us up to Monday, June 15, 1964, when he went to New York where he met Granello for a second time at his New York office. Holzman was then being shadowed by the captain of his pleasure boat, who Holzman pretended was a detective. Holzman again told Granello that he did not need any partner and would not give Granello $25,000. According to the witness, Granello agreed to reduce Holzman's contribution of $25,000 to the "family" to $12,500 with the promise that Granello would make up the difference if Holzman would make Granello a 25% partner in all of his business ventures. Holzman refused.

On Thursday of the same week, June 18th, Holzman met Granello again in his New York office, and Granello demanded then and there $5,000 for the "family" by Friday night to show the "family" good faith (1215-1219).

The ruse then being carried on by Holzman with regard to Captain Ambler, his boat captain, had by now been discovered by Granello, and Granello advised Holzman that he did not need a detective as he could straighten everything out (1217).

Holzman testified at this point he was truly frightened of Granello and was stalling as long as he could, but Granello kept insisting on the $5,000 for the "family" (1223).

On the following Monday, which would be June 29, 1964, Granello phoned Holzman at his home and Mrs. Holzman answered. When she realized it was Granello, Mrs. Holzman declared that if he did not leave them alone, that she was going to the Federal Bureau of Investigation.

By now, it was becoming obvious to Granello that Holzman was no easy pickings so on the very next morning, Holzman's married daughter, Dolores Billing (939, *et seq.*), who resided with her husband, Ronald, in Plainview in the Town of Oyster Bay, received a telephone call and was threatened (953).

> "If your father doesn't cooperate we'll come to Sylvia Lane and kick your fuckin' pregnant belly in."

Thereafter, there were a whole series of calls between Holzman and Granello wherein Granello tried to induce Holzman to come to New York City to talk, which, of course, Holzman did not fall for.

It was at this juncture that Holzman's New York office was bugged with Holzman's consent, and a meeting with Granello was held on Monday, July 2nd.

The tape recording of the bugged conversation was transcribed by an official Grand Jury stenographer and copies were made available to each member of the jury as well as defense counsel and the judge so that all could follow the playing of the tape in the courtroom. The tape itself was People's Exhibit 7 whereas the transcript is People's Exhibit 7A. The tape recording as played for the jury was recorded and will be found in the record on appeal starting on page 1283. The tape conversation demonstrates clearly and unequivocally the nature and quality of the pressure that Granello was bringing to bear on Holzman. It is shot through with innuendo and inference that is susceptible of only one conclusion, and that is, Holzman should pony up the $25,000 for the "family" as well as make Granello his partner.

For example, when Holzman tells Granello that his associate, Joey Albino, does not want a partner, Granello replies that he told Rocky Graziano to speak to Joey Albino (1286; 1328-1329).

Any doubt or curiosity remaining regarding the true meaning and intentions of Granello are cleared up conclusively by People's Exhibits 9 and 9A, a taped telephone conversation and typewritten transcript thereof between Conte and Kaiser regarding the beating of Albino, the Holzman ally.

Even more enlightening was the bugged conversation of the meeting between Granello and Holzman in Holzman's New York office wherein Holzman atempts to find out from Granello what "family" is coming into his business, uninvited and for free with Granello. The tape and transcript thereof are People's Exhibits 7 and 7A, respectively.

Granello in what could easily be an Amos-Andy dialogue, if it was not for real, does not want to reveal the "family" in question. Holzman is told outright by Granello (1294):

"No, you can't know that * * * that's impossible, you can't know because, uh, no matter what happens you can't know * * *."

It appears that at times Granello himself becomes desperate undoubtedly because he has made certain promises to the "family" regarding Holzman that now seem to be slipping through his grip. For example, Granello reminds Holzman that (1300):

"There are people from the past that felt that they have interest in you * * * and there's more than one person, and I'm not going to mention their names * * *."

Granello of all things then agrees to put up one half of the $25,000 going to the "family" if Holzman will only capitulate.

Holzman, of course, now wants to know why Granello suddenly will pick up one half of the tariff going to the "family". Granello replies (1313):

"This would clear the road for me to be with you; not that I am paying a shake to be with you. I don't * * * but in this instant, the people that are involved, I want to clear them up and they have no interest in you, and there can be no further bullshit or nonsense, and this is not a sha- you may look at it as a shake. You say what am I paying? What are they giving me?"

The great trouble is Granello couldn't or wouldn't answer his own questions about "they".

The reason for Granello's hesitancy, if not fright, appears in the very next exchange. Holzman inquires of Granello (1314):

"Is this got anything to do with this, with this guy with the cigar over in Woodside, over in Corona, or wherever it is?"

Granello replies (*supra*):

> "Don't ask, don't ask me that. Don't ask me these questions. I'm not going to answer them."

The man "with the cigar over in Woodside" is none other than Mike Miranda, a consigliere in the Vito Geneovese "family". The reason Holzman confronted Granello with Mike Miranda is because Dino Conte on June 4th, when he first contacted Holzman, brought Mike Miranda into the situation (1347-1348).

So it was that Holzman probing to learn the identity of the "family" about to extort $25,000 in cash from him and muscle in on his business, said to Granello (1314):

> "When your man, Dino, was here • • • he mentioned that—uh—Miranda situation."

At the mere mention of Mike Miranda's name, Granello replied (1314):

> "Listen, I don't—I don't want you to ask me no, none of them kind of questions. I'm just going to tell you one thing; and I'm going to tell you; don't mention nobody's name. I don't want nobody's name mentioned."

It is perfectly obvious why Granello does not want "nobody's name mentioned". "Nobody" is Mike Miranda of the Vito Geneovese family.

In Cuba, Granello, according to Granello, was the "jefe" or "boss" (1315-1316), but the suspicion looms large that in Corona or Woodside, Granello's posture with the "family" is slightly different.

Holzman finally closed the door forever when he telephoned Granello at Patrisseys on Mulberry Street. A tape and transcript, People's Exhibits 8 and 8A corroborate beyond all doubt Holzman's testimony that Granello's efforts were nothing less than an attempt to extort $25,000 from

him for what was probably the Vito Genovese family through Mike Miranda, a consigliere, plus 25% of Holzman's business.

Numbers 1 and 2 appearing on People's Exhibit 8A are the voices of Holzman's and Granello's respectively. Of course, the court's attention is directed to the entire transcript, although the flavor is circumscribed by this brief exchange (1376-1377):

"1—we're not going to take in any partners, and I can't take in any partners—

"2 O.K., buddy.

"1—in this business.

"2. Now, I'm going to tell you something—

"1 Yeah.

"2—see. Now I'm going to tell you something, See, Irving, see, you used me pretty good and, uh, uh, now, I'm going, I'm going to tell you something and you could do what you want, go whichever way you want. And it ain't a threat. It's a fact, see. Uh, if you think you're going to play with me you're making a big mistake. Now I tried to work out everything the way you want it, but I see you're taking like an inch at a time. I want to extend myself, but if that's the way it's going to be then you better go and get who you going to get. Understand what I mean? Go to the, uh, Cahn or the FBI or whoever you want 'cause *you're going to need them.* Do you understand that? Do you hear me?

"1 Yeah, I hear you.

"2 O.K. And, uh, if you think you're going to use me and you're going to play games with me, you ain't capable, see. You may think you are, and I'm trying to be nice, but I could see with you that there's only one way with you and *I am just going to unleash the people and let them do what the fuck they want with you,* you understand? Because I could see what it is with you, see. And you want to play with me that way, which you shouldn't do, and I told you not to do it. You wanted—*now you've incurred my wrath,* you see. And we'll see who's going to come out on top. Because *anybody that's associated with*

you is going to wind up in the fuckin' hospital. And you'll see a fury that you never saw in your life and this is coming from Mr. Burns himself. You understand?

"1 Yup.

"2 So when you, when you going to tell your people, you tell them that it's from me. You understand, Irving?" (Italics mine).

The Kaiser's Involvement

There can be no doubt that as between Granello, Conte and Kaiser, Granello was the "jefe", Corona notwithstanding. Nevertheless, it is clear beyond cavil that Kaiser was a knowing participant in the efforts of Granello and Conte to extort $25,000 from Holzman and to cut themselves in for 25% of Holzman's business ventures.

Proof of this fact stems principally from two telephone conversations between Kaiser and Conte which were intercepted and recorded from the phone at the Headline Lounge. The transcripts in question are People's Exhibits 9A and 9B.

Because the exhibits constitute the essential proof that Kaiser well knew the purpose for and manner in which the information acquired by him from Bob Luttman was being used by Conte and Granello, and especially because the judgment roll was not printed, we shall, for the convenience of the Court, reproduce as an appendix of our brief, both transcripts in toto.

Kaiser is calling in both cases from Kitty City in the old Flushing Meadow area where Kaiser apparently worked as some kind of guard or bouncer.

The voices on both transcripts are numbered 1 and 2. In each case, the numerals represent Kaiser and Conte, respectively.

We shall, for the further convenience of the Court, give a short summary of both conversations.

Exhibit 8A

The conversation opens with a discussion of the possibility that Joey Albino, Holzman's aid, might have been threatened or beaten by Granello who is referred to throughout both conversations as "Sally" or "the man", and the conclusion is it would have been wrong for Albino to have been assaulted.

Suddenly, Kaiser volunteers that:

> "There's no question McGloyne's still alive. He's over here [Kitty City] wth his whole fucking gang of kids."

Conte and Kaiser then turned the discussion to the efforts to extort the $25,000 from Holzman and to get a piece of Holzman's business, and both agree that the conspiracy should be abandoned because Sally handled the operation badly. There can be no doubt that Kaiser was thoroughly disgusted with the methods resorted to by Sally and the crude way that Sally used the secret information acquired by Kaiser from Bob Luttman, an employee of Holzman. Kaiser's concern developed over the fact that Holzman would have to be a moron not to suspect that it was Bob Luttman who was feeding the information on Holzman that Sally used to make his criminal judgments.

Kaiser obviously had wanted to protect Luttman from Holzman and was upset because he believed that Luttman would be fired.

Kaiser then complained that:

> "If it [the shake] would have been handled the way I told you in the fucking beginning, it would have been done and it [the extortion] would have been over with now."

Kaiser was obviously bitter because Sally did not, as he suggested, bring:

> "in an outside element like I told him to * * * to straighten it out; instead of just walking in there, uh, telling the fucking man that anybody as big as he is, nobody gets as big as he is in this business unless he's with somebody or he don't last."

Both Kaiser and Conte were of a mind that the attempts to extort the money from Holzman should now be dropped, but it then appears that Kaiser exercised a second thought and suggested:

> "What I would do is maybe wait a month."

Conte obviously disagreed, and they went back to the subject of who was to blame for blowing the criminal efforts to extort $25,000 for the "family" and to get 25% of Holzman's business. Both Kaiser and Conte disavow any responsibility. Indeed, Kaiser declares:

> "It wasn't handled by me badly, * * * the fucking information I brought over there was all correct, so, uh, there was nothing handled by me badly."

Boasting a little bit, Kaiser then stated:

> "I brought, I brought, the man over a shot for you and for him * * *."
>
> "So the man's got nobody to blame but himself, Dino, because, uh, there was nothing inaccurate that I brought to the man. The only thing is he presented it wrong."
>
> "Well, well, let him go to Cahn. Because there's nothing they can do cause Sally's forgetting about it."

Apparently, Kaiser and Conte believed that with the abandonment of the conspiracy by Granello, there was no criminal liability and that no violation occurred unless the money had been paid.

People's Exhibit 9B

The second conversation is as truly bizarre as any that has come to the attention of this office in this decade. For in it, Kaiser and Conte discuss, amongst other things, the selection of a new and different "victim" who might satisfy their criminal greed. On this score, the Court is referred to the following exchange between Kaiser, again speaking from Kitty City, in the Douglaston area, to Conte at his bar in the Times Square area of Manhattan.

> "Yeh, yeh, I'll tell you there's a lot of fucking Cadillacs pulling out of this place [Kitty City]. Well, fine one. Jesus, I'm starving over here. Pulling out of this fucking driveway here. Find a victim there. That's for sure. Sure, we got to find a victim. Now, we, we lost Holzman so now we got to find another victim. Find somebody else out there. Well, we'll see what else come up. Well, I got something coming up pretty soon. See what happens. Maybe I can retire things go right in the next few weeks. Well, just be careful now, that's all, be fucking careful."

Kaiser and Conte then talk about "this thing that time on Park Avenue" and Kaiser brought up the subject of "Max Factor" the manufacturer of cosmetics, as he referred to the fact that when he was in a drug store, and:

> "I saw a picture of Max Factor. * * * I wonder if he's got any money. * * * He's, he's pretty big in that business, too, you know. * * * When I come over I'll tell you about it what this guy told me."

They then discused the fact that Holzman was "fucking terrified" and staying in his home and not coming to New York.

As a matter of fact Conte remarked that Holzman "can never walk into New York again he knows that."

They also discussed the fact that Sally flew to Chicago to see a "Lyn Durant" about Holzman.

Continuing they discussed the fact that Holzman will not be able to hold the operating part of his business, that is, the Routes unless he services the equipment in the various bars and grills throughout Metropolitan New York, and this he cannot do while he is buttoned up in his home. Further, that they believed that this is what Sally now has in mind.

Both Kaiser and Conte then discussed the money that Holzman paid to Granello because of the "Gallo business". Kaiser then remarked that Sally was "terrorizing" Holzman.

> "He told him uh, he says 'I'll guarantee you you can't come to New York'."

This then is the general flavor of the conversation between Kaiser and Conte.

It is little wonder then why in the face of the evidence, not merely out of the mouth of the victim, but the taped conversations, that Conte and Granello pled guilty. Indeed, it is rare in this day to encounter a cruder attempt to extort $25,000 and 25% of a man's business than the evidence reflected by the proof in this trial.

The Writ Should Be Disallowed

There is no compelling reason for granting the writ because the Court of Appeals did not decide a Federal constitutional question heretofore undetermined by this Court.

Moreover, the Court of Appeals has not decided this case in a way probably not in accordance with any prior controlling decision of this Court.

What really happened below is this: It was anticipated that the Supreme Court would extend the Fourth Amendment to non-trespass wiretap cases as it did on December 18, 1967, in *Katz* v. *United States*, — U. S. —, 88 S. Ct. 507, so the Court rehabilitated § 813-a of the Code in *Berger* terms with this view in mind.

Clearly, there is no Federal constitutional prohibition against the Court's reconstruction of § 813-a.

Secondly, there is nothing so far as we know which would outlaw this state court action in any prior decision of this Court and the petitioner cites no authority in his petition.

Petitioner's argument (pp. 21-23) that *Berger* rendered § 813-a void is incorrect (*Dombrowski* v. *Pifster*, 380 U. S. 479, p. 491). As a matter of fact, not even the lone dissenter below questioned the *power* of the Court of Appeals to rehabilitate the statute. Rather, the Chief Judge thought it "unwise if not mischievous", not that the Court was precluded by Federal constitutional law.

Defendant's "Reasons For Granting The Writ" (p. 14) are the widespread concern in the country "that presently exists as to the effect of scientific progress upon the privacy and dignity of the individual." This concern is not in itself adequate for jurisdictional purposes unless novel or incorrectly determined Fourth Amendment rights are involved.

There is also no merit to petitioner's second argument (p. 15) wherein he claims that "*one* of the grounds relied upon by the Court of Appeals in sustaining the wiretapping herein was that *Berger* dealt only with 'bugging' by trespassory intrusion upon 'private premises'."

It is most respectfully submitted that a careful reading of the majority opinion does not support the charge that the Court's determination rests even in part on the fact that a non-trespass eavesdrop was here involved.

Indeed, we believe that Judge Keating specifically rejected the idea for New York that "trespass" was an adequate standard to determine the presence or absence of a Fourth Amendment question where bugging or wiretapping was involved.

The decision of the Court to apply *Berger* prospectively is not a basis for review (pp. 15-21; 30-31) because the Court specifically applied *Berger* to this appeal.

Had the Court below refused to apply *Berger* to the current case then an arguable point might exist. It is clear though that where, as here, the Court has, in fact, applied *Berger* to the police action challenged, no issue of retroactivity is presented.

Also lacking in merit is the reference to the "return." The argument is "no return" was ever made by the Nassau authorities to anyone so a clear violation of the Fourth Amendment is revealed (pp. 19-20).

Nothing could be further from the truth. In the best way possible, a return was made to the defense counsel and the Judge prior to and during the trial.

Prior to the trial, a copy of the order, the affidavit, and in particular the sworn testimony of Assistant District Attorney Norman Levy, upon which the order was based, were turned over to the defense counsel. Concededly the Judge had his copy at all times.

Following study and deliberation, a *long pre-trial hearing* was held permitting the defense counsel a full and complete opportunity to be heard and the right to cross-examine.

Moreover, at the trial the defense counsel had a verbatim typewritten copy of both taped conversations before the tapes were offered as evidence.

It is undisputed, we think, that a "return" was made to both petitioner and the trial judge. It is respectfully sub-

mitted the return was reasonable. Further, it certainly did not prejudice the petitioner in any way and no prejudice has been suggested.

That a return might be made to others or at a different time is not of constitutional proportions (*cf. Katz* v. *United States, supra; Osborn* v. *United States,* 385 U. S. 323).

The petitioner completely misses the mark when he says his Fourteenth Amendment rights were denied him because the state incorrectly labeled the sum of his two conversations as a "confession" (pp. 32-39). Not so (*Escobedo* v. *Illinois,* 378 U. S. 478, pp. 482-483; *People* v. *Bretagana,* 298 N.Y. 323, p. 326; *People* v. *Giro,* 197 N.Y. 152; 3 Wigmore on Evidence § 821).

It is a fact that together the conversations constituted or added up to a direct acknowledgment of guilt by Kaiser that he participated criminally in the planning and preparation with the co-conspirators Dino Conte and Salvatore Granello, a/k/a Sally Burns, of the attempt to extort $25,000 from Irving Holzman for an underworld "family" and to cut themselves in for 25% of Holzman's business.

In sum, they constituted a direct acknowledgment of guilt which is the classic definition of a confession (*supra*).

The § 605 argument (pp. 21-29) is once again raised in support of the application, it being charged that the police action in this case constituted a misdemeanor under § 605 of the Federal Communications Act because there was a tap and a divulgence without the permission or consent of Dino Conte or the petitioner, Thomas Kaiser, who were parties to the telephone conversation. The violation is not of constitutional proportions so we do not believe the petition should be granted on that ground (*Schwartz* v. *Texas,* 365 U. S. 458; *Pugach* v. *Dollinger,* 365 U. S. 458).

It is unclear precisely why and in what way this Court should now conclude that where a valid legal search order

has been issued, the production of the seized evidence as proof at the state criminal trial violates any constitutional right of the petitioner whether or not there has been a technical violation of § 605 by some law enforcement officer.

Moreover, there is nothing in *Berger* (388 U. S. 41) or *Katz* (—, U. S. —, 88 S. Ct. 507) which would suggest that this Court is moving in the direction of outlawing wiretap evidence or eavesdrop evidence where the police action meets Fourth Amendment requirements.

As a matter of fact, it might be the type of a case where this Court could reconsider the wisdom of *Benanti* v. *United States*, 355 U. S. 96 and whether the rule should be continued.

It is pointless, we think, at this late date to argue that it was not the intention of Congress to outlaw ordered wiretaps by state law enforcement officers even though many are the writers who conclude thusly:

> "57 Colum. L. Rev. 1159, 1162 (1957); 6 Geo. Wash. L. Rev. 326, 329 (1938); 53 Harv. L. Rev. 863, 865 (1940); 26 Ill. BJ 376, 377 (1938); 34 Ill. L. Rev. 758 (1940); 51 J. Crim. L. C & PS 441, 442 n 14 (1960); 52 Mich. L. Rev. 430, 432 (1954); 15 N.Y.U. L. Rev. 279 (1938); 16 U. Fla. L. Rev. 120, 121 n 10 (1963); 24 Va. L. Rev. 451 (1938)."

The better argument, we believe, might be to ask this Court to reconsider the wisdom of its prior decisions in the light of today's problems and the current state of the law.

There is good reason to re-think the issue of § 605 particularly in the light of *Osborn*, *Berger* and *Katz*. We believe this is especially so in the case of *Katz* because in outlawing eavesdropping, *i.e.* bug or wiretap, trespass or no, without a Fourth Amendment search warrant or order, the implication is there that the interception of a telephonic conversation pursuant to a valid search order, good in terms of the Fourth Amendment, would be acceptable to the Court.

It is undisputed that the invasion of Katz' privacy is precisely the same whether the Federal Bureau of Investigation bugged the phone booth or recorded from an outside terminal. The threat or danger to society of the one is not substantially different from the evil of the other.

Certainly, Mr. Katz would not have felt any differently if the police authorities had tapped rather than bug.

The prejudice to him would be exactly the same for "one who occupies [a phone booth], shuts the door behind him, and pays the toll that permits him to place a call, is surely entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world" (*Katz* v. *United States*, — U. S. —, 88 S. Ct. 507, p.).

Nevertheless, this Court has specifically concluded that the Federal Bureau of Investigation might have procured an order to bug because "the Fourth Amendment cannot be translated into a general constitutional right to privacy."

Did the Court mean in *Katz* the Federal Bureau of Investigation might procure an order to bug alone or in any non-trespass eavesdrop? If the latter, then it seems the § 605 argument has fallen.

Surely there is no need to continue the *Benanti* doctrine in view of the conclusion of the Court in *Katz* that the Fourth Amendment is now applicable to *all* eavesdropping, whether bugging or wiretapping, and with or without a trespass. There is more than adequate protection for society inherent in this decision.

Moreover, history teaches us that the *Benanti* rule found little favor nationwide (Orfield, Criminal Procedure under the Federal Rules, § 26:881).

The contradiction was further heightened by the Court's refusal to enjoin State Court's Criminal Prosecutions predicated upon wiretap evidence (*Stefanelli* v. *Minard*, 342 U. S. 117; *Pugach* v. *Dollinger*, 365 U. S. 458). The confusion engendered by the § 605 argument can be cleared up

without prejudice now that the Court has seen fit to apply the Fourth Amendment to all eavesdropping.

We believe the only question remaining is whether the search and seizure conducted in this case complied with Fourth Amendment standards.

The affidavit of Assistant District Attorney Norman J. Levy, as well as his sworn testimony, plus the order of the County Court Judge will be found in Appendix B.

It will be noted from an examination of the order that it was signed by Judge Spitzer on July 1, 1964. The conversations complained of were intercepted between 6 P.M., July 3, 1964, and 10:15 A.M., July 5, 1964.

The case was thereupon presented directly to a Nassau County Grand Jury resulting in the arrest of all three defendants on July 15, 1964, and the arraignment on the indictment on July 16, 1964.

It is clear that the facts revealed by this petition do not come within the spirit of the roving commission condemned by this Court in *Berger* (388 U. S. 41, pp. 59-60).

The *Berger* order provided for a sixty day search that was extended for sixty more days.

Although the form order in this case also provided for a sixty day eavesdrop, it is undisputed that the police action questioned all took place between Friday evening 6 P.M., July 3, 1964, and Monday morning 10:15 A.M., July 5, 1964.

The Court is reminded that the order was signed on July 1, 1964, and the entire case presented to a Grand Jury resulting in the arrest and the arraignment of the three conspirators by July 16, 1964. While it is uncertain how long an eavesdrop may run without falling below the minimum standards of the Fourth Amendment, it is respectfully submitted that a single weekend should not be repugnant to a fair interpretation of the Constitution.

Moreover, we believe the defects in the order and affidavit noted by this Court in *Berger* are not here present. First, there are no doubts or suspicions about what, if any crimes, were in progress (*Berger*, 388 U. S. 41, pp. 55-58). Both the order and the Levy testimony make it clear beyond cavil that the offenses of conspiracy to commit the crime of extortion, coercion and attempted extortion were then, in fact, actually in progress. The ordering Judge was aware that the crime was actually being committed at the very moment that the District Attorney appeared under oath before him.

Secondly, there was not the slightest doubt about the identity of what the prosecutor was searching for (*supra*, pp. 55-58).

Specifically, the Nassau County Authorities wanted to record Granello and Conte demanding $25,000 from Irving Holzman for the underworld "family" of Mike Miranda and Vito Genovese, as well as 25% of Irving Holzman's interest in all of his businesses. No conscious human being can read the testimony of Mr. Levy otherwise.

It is both clear and convincing that the prosecutor stated his belief that the crimes of conspiracy and extortion were actually in progress, and he particularized in his testimony to the satisfaction of the issuing Judge precisely and exactly the conversations of both Granello and Conte that he wanted to record.

Finally, this Court's insistence in *Berger* upon a showing of urgency or a time of crises which required immediate aid (*supra*, p. 60) was convincingly established in at least two respects.

1. The victim's wife had already been attacked and beaten in her home.

2. The daughter of the victim received an anonymous telephone call that said: "If your father doesn't cooperate we'll come to Sylvia Lane and kick your fucking pregnant belly in."

It is beyond question that Granello was telling Holzman the truth when Granello said that the people that he was with are "animals." This threat suggested to Judge Spitzer as I think it should to this Court that a proper showing of "exigent circumstances" (*supra*, p. 60) has been made as only the "wild animals" of a "family" can make them.

Speaking of Chief Judge Miller's order in *Osborn* v. *United States* (385 U. S. 322), this Court said (*supra*, p. 330):

> "There can hardly be a clearer example of 'the procedure of antecedent justification before a magistrate that is central to the Fourth Amendment', as 'a pre-condition of lawful electronic surveillance.'"

The respondent respectfully submits there was a much "clearer example" than the *Osborn* situation and it is that of Judge Spitzer of the County Court of the County of Nassau who before acting, and surely with the Fourth Amendment in mind, demanded and received more evidence identifying the crime than either Chief Judge Miller or Judge Grey of the same Court in *Osborn*, and he demanded and received much more evidence identifying the particular conversations sought out than by either Chief Judge Miller or Judge Grey.

In sum, then, petitioner makes no case for relief.

Respectfully submitted,

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HENRY P. DEVINE,
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APPENDIX A

STATE OF NEW YORK

COURT OF APPEALS

2. No. 470. 67.

THE PEOPLE &c.,

Respondent,

against

THOMAS R. KAISER,

Appellant.

KEATING, *J.*:

Irving Holtzman was an executive of several corporations engaged in the distribution and operation of coin operated equipment whose enterprises reached into four of the five boroughs of New York City as well as Nassau and Suffolk Counties. In recent years Mr. Holtzman's business ventures grew and prospered to such an extent that the self-appointed "family" of sharers in the prosperity of honest businessmen determined that the time had come for Mr. Holtzman to share his wealth—"to give up a piece" of his business.

Sometime during the early part of June, 1964 a concerted effort was commenced to extort $25,000 from Mr. Holtzman as well as a 25% share of his business interests. As the arrangement was explained to Mr. Holtzman, "If at the end of (a) week you have $1 left, [we] take 25 cents and you keep 75 cents."

Mr. Holtzman, unmoved by the "family's" generosity and shaken by an assault on his wife by certain members of the "family", described to him as "animals", contacted the Nassau County police.

Appendix A

During the month of June the police, with the consent of Mr. Holtzman, through the use of wiretaps and bugs, recorded numerous conversations of Mr. Holtzman and one Salvatore Granello, known to his "family" and "animals" as Sally Burns. These recordings clearly established the existence of an extortion conspiracy on the part of Granello, Dino Conte and others.

As Mr. Holtzman's adamance persisted through June, the "family" apparently became more anxious. On the morning of June 30, 1964 Mr. Holtzman's daughter, Mrs. Ronald Billings, then pregnant and residing in Plainview, received a call which, from its contents, could only have been made by one of the "animals." Mrs. Billings was advised that "if your father doesn't cooperate we'll come to Sylvia Lane (Plainview) and kick your fucking pregnant belly in."

With this threat to the family of Mr. Holtzman, the District Attorney's office determined that it could best protect Mr. Holtzman and his family and determine precisely who was responsible for the threats by recording the telephonic communications made by Salvatore Granello and Dino Conte from several bars which they frequented and from which they had previously communicated with Mr. Holtzman.

In a petition and affidavit filed pursuant to the Code of Criminal Procedure, § 813-a, an assistant district attorney of Nassau County asked for a court order to make the necessary wiretaps.

In testimony made under oath the assistant district attorney related, with particularity and detail, the events which had transpired up to that point and which have been briefly narrated above.

At the close of this testimony the following colloquy took place:

The Court: At the present time have you been able to get any clue which would lead you definitely to the caller [who threatened Mrs. Billings]?

Mr. Levy: We have not, your Honor.

The Court: You feel as though this tap will assist you in that quest?

Mr. Levy: Yes, your Honor.

The Court: From your experience over the years do you feel that there is reasonable ground to believe that evidence of croime may be obtained by intercepting messages over this telephone?

Mr. Levy: Yes, your Honor. This telephone has been used by Salvatore Granello alias Sally Burns in telephone conversations with the complainant, Irving Holtzman, in regard to the demand for $25,000 and 25 percent of his business.

The Court: So that in addition to the alleged extortion you feel faced here with the threats of violence and physical harm to innocent people?

Mr. Levy: Yes, your Honor, and the investigation regarding the assault on Mrs. Ruth Holtzman at her home in Nassau County as well as the threatening telephone call to Mrs. Billings.

The Court: I am satisfied that there is reasonable ground for granting your application.

The order issued by Justice Spitzer in compliance with the provisions of section 813a recited the particular telephone numbers involved as well as their locations and went on to order

"that under and pursuant to the provisions of Article I, Section 12, of the Constitution of the State of New York and the statutes relating thereto, and under and pursuant to the provisions of Section

813-a of the Code of Criminal Procedure of the State of New York and the statutes relating thereto, the District Attorney of Nassau County and the said *Norman J. Levy* as an Assistant District Attorney of Nassau County, and any and all persons employed or assigned to the control and direction of the District Attorney of Nassau County and the said *Norman J. Levy* be, and they hereby are, authorized and empowered to intercept and record all telephone communications made by and to *Salvatore Granello, Dino Conte* and any and all other persons communicating by both incoming and outgoing over the telephone located at *255 West 43rd Street, New York County, New York,* now designated as *212 LW 4-2523* and by whatsoever number the said telephone and telephone line may be hereafter designated and further . . ."

The order was to be effective from July 1, 1964 until August 29, 1964.

On the evening of July 3 and morning of July 5 during the course of the tap made on the telephone located at the Headline Bar, there were recorded conversations between Dino Conte and the defendant-appellant in this action, Thomas Kaiser. The conversations clearly and beyond any reasonable doubt implicated the defendant as a co-conspirator who had supplied Granello with detailed information regarding the operation of Mr. Holtzman's business enterprises. In addition, both conversations involved discussions of what should be done in light of Mr. Holtzman's intransigence. The defendant to his credit appears to have been against terrorizing him.

On July 15, 1964 Granello, Conte and Kaiser were arrested, and on July 16, 1964 Kaiser was arraigned on an indictment charging him with Coercion, Attempted Ex-

tortion, Conspiracy to Commit Extortion, Assault Second Degree and Burglary Second Degree. The defendant was convicted, after a trial by jury, of all but the latter two crimes. At the trial and over the objection of defense counsel the transcripts of wiretap recordings made on July 3 and 5 were admitted into evidence.

Alleging, among other things, that the admission of this evidence was reversible error, the defendant appealed to the Appellate Division (Second Department). The court unanimously affirmed his conviction. The defendant appeals to this court by permission of the Chief Judge.

The defendant argues on this appeal that, since the Supreme Court in *Berger* v. *New York*, 388 U. S. 41 (1967), struck down as unconstitutional on its face the very statute which authorized the wiretap order, the evidence seized pursuant to that order was erroneously admitted. The defendant urges, in addition, that all wiretap evidence should be held to be inadmissible because the seizure and divulgence of the evidence constitutes a violation of section 605 of the Federal Communications Act.

In *Berger* v. *New York*, *supra*, a case which involved the admissibility of evidence obtained by the use of a bugging device, the Supreme Court struck down Code of Criminal Procedure § 813a. The statute reads as follows:

> "An ex parte order for eavesdropping as defined in subdivisions one and two of section seven hundred thirty-eight of the penal law may be issued by any justice of the supreme court or judge of a county court or of the court of general sessions of the county of New York upon oath or affirmation of a district attorney, or of the attorney general or of an officer above the rank of sergeant of any police department of the state or of any political subdivision thereof, that there is reasonable ground to believe that evidence of crime may be thus obtained,

and particularly describing the person or persons whose communications, conversations or discussions are to be overheard or recorded and the purpose thereof, and, in the case of a telegraphic or telephonic communication, identifying the particular telephone number or telegraph line involved. In connection with the issuance of such an order the justice or judge may examine on oath the applicant and any other witness he may produce and shall satisfy himself of the existence of reasonable grounds for the granting of such application. Any such order shall be effective for the time specified therein but not for a period of more than two months unless extended or renewed by the justice or judge who signed and issued the original order upon satisfying himself that such extension or renewal is in the public interest. Any such order together with the papers upon which the application was based, shall be delivered to and retained by the applicant as authority for the eavesdropping authorized therein. A true copy of such order shall at all times be retained in his possession by the judge or justice issuing the same, and, in the event of the denial of an application for such an order, a true copy of the papers upon which the application was based shall in like manner be retained by the judge or justice denying the same."

The Supreme Court, after examining the statute, concluded that it was "too broad in its sweep, resulting in a trespassory intrusion into a constitutionally protected area and is therefore violative of the Fourth and Fourteenth Amendments" (387 U. S. 44). Specifically the Court found the statute "defective on its face" for several reasons:

Appendix A

"Eavesdropping is authorized without requiring belief that any particular offense has been or is being committed; nor that the property sought, the conversations, be particularly described. The purpose of the probable cause requirement of the Fourth Amendment to keep the state out of constitutionally protected areas until it has reason to believe that a specific crime has been or is being committed is thereby wholly aborted. Likewise the statute's failure to describe with particularity the conversations sought gives the officer a roving commission to seize any and all conversations. It is true that the statute requires the naming of 'the person or persons whose communications, conversations or discussions are to be overheard or recorded. . . .' But this does no more than identify the person whose constitutionally protected area is to be invaded rather than 'particularly describing' the communications, conversations, or discussions to be seized. As with general warrants this leaves too much to the discretion of the officer executing the order. Secondly, authorization of eavesdropping for a two-month period is the equivalent of a series of intrusions, searches, and seizures pursuant to a single showing of probable cause. Prompt execution is also avoided. During such a long and continuous (24 hours a day) period the conversations of any and all persons coming into the area covered by the device will be seized indiscriminately and without regard to their connection to the crime under investigation. Moreover, the statute permits, as was done here, extensions of the original two-month period—presumedly for two months each—on a mere showing that such extension is 'in the public interest.' Apparently the original grounds on which the eavesdrop order was

initially issued also form the basis of the renewal. This we believe insufficient without a showing of present probable cause for the continuance of the eavesdrop. Third, the statute places no termination date on the eavesdrop once the conversation sought is seized. This is left entirely in the discretion of the officer. Finally, the statute's procedure, necessarily because its success depends on secrecy, has no requirement for notice as do conventional warrants, nor does it overcome this defect by requiring some showing of special facts. On the contrary, it permits unconsented entry without any showing of exigent circumstances. Such a showing of exigency, in order to avoid notice, would appear more important in eavesdropping, with its inherent dangers, than that required when conventional procedures of search and seizure are utilized. Nor does the statute provide for a return on the warrant thereby leaving full discretion in the officer as to the use of seized conversations of innocent as well as guilty parties. In short, the statute's blanket grant of permission to eavesdrop is without adequate judicial supervision or protective procedures'' (388 U. S. 58-60).

Whatever the effect of the decision on bugging cases and future bugging orders in this state, it should be noted that nowhere in the opinion in *Berger* does the court hold that wiretapping comes within the purview of the Fourth Amendment. While we shall accept for the present the appellant's assertion that *Berger* brought wiretapping within the purview of the Fourth Amendment and while we hold that the conditions set forth in *Berger* should, as a matter of policy, apply to future wiretapping orders issued under the statute, we believe that a reversal of the

appellant's conviction is neither mandated by *Berger* nor by the prophylactic purpose of the exclusionary rule to which wiretap evidence obtained in violation of the Fourth Amendment is now subject.

At the time the wiretap order in the case at bar was issued, there were no federal constitutional restraints on the securing of wiretap evidence. The Supreme Court had steadfastly adhered to its decision in *Olmstead* v. *United States*, 277 U. S. 436, that wiretapping, accomplished without a trespass into a person's home or other premises, does not violate the Fourth Amendment's prohibition against unreasonable searches and seizures. Indeed, to this day *Olmstead* has not been squarely repudiated by the Supreme Court.

The Constitution and the laws of this state, however, place severe restraints on the right of public officials to obtain evidence by wiretapping. In 1938 the people of this state ratified Article I, § 12 of the State Constitution. That amendment provides:

> "The right of the people to be secure against unreasonable interception of telephone and telegraph communications shall not be violated, and ex parte orders or warrants shall issue only upon oath or affirmation that there is reasonable ground to believe that evidence of crime may be thus obtained, and identifying the particular means of communication, and particularly describing the person or persons whose communications are to be intercepted and the purpose thereof."

Section 813a of the Code of Criminal Procedure quoted earlier and section 738 of the Penal Law supplemented the provisions of the Constitution and extended them to all eavesdropping evidence obtained by "instrument" with-

out the consent of one of the parties to the conversation.

In *People* v. *McCall*, 17 N Y 2d 152, we held that the expressions "oath or affirmation" and "reasonable grounds to believe" contained in the statute "could have no other meaning" than to require the same factual basis to be shown for the issuance of the eavesdropping order "as in the case of search warrants" (17 N Y 2d 159). And relying upon cases in which we held affidavits to be insufficient in ordinary search warrant cases, we held that the wiretap evidence should have been excluded.

Subsequently in *People* v. *McDonnell*, 18 N Y 2d 509, we applied the same constitutional standards governing ordinary searches in holding that a defendant—not a party to the conversation—had standing to challenge the factual basis upon which the wiretap order was issued. And in *Matter of Sarisohn* (decided herewith) we again strictly adhere to the standards set down in cases involving ordinary searches and seizures.

It is thus "clear that 'the procedure of antecedent justification before a magistrate that is central to the Fourth Amendment' [was] made a precondition of electronic surveillance" (*Lopez* v. *United States*, 373 U. S. 427, 464 [dissenting opinion of Brennan, *J.*]) and that no wiretap or bugging order could issue except upon an adequate factual showing, i.e., probable cause to believe that a crime had been committed and that the conversations particularized in the order would be seized.

With this requirement as with all the requirements of the statute the order in question complied. The most cursory examination of the testimony of the assistant district attorney made under oath before the judge who issued the warrant clearly indicates that there was probable cause to believe that a crime was being committed and

that the conversations regarding threats to Mr. Holtzman and his family would be obtained.[1]

It is true that the order did not adequately specify the precise conversation the police were authorized to seize —although the testimony of the district attorney under oath, which becomes part of the order, did (Code of Criminal Procedure § 813a); that the order was not sufficiently limited in time—although the actual conversations seized came within a limited period of three days; that no exigent circumstances were alleged for dispensing with the notice requirement—although, under Supreme Court decisions defining "exigent circumstances", those circumstances were present here (*Ker* v. *California*, 374 U. S. 25, 37-40); and that there was no return on the warrant—although we presume a return was made.

The reason for these defects is obvious—there has been no previous decision outlining the necessity for those requirements which *Berger* found to be mandatory. Under these circumstances, a reversal of the conviction would not be warranted either under the decisions of this court or the Supreme Court (*People* v. *McQueen*, 18 N Y 2d 337; *People* v. *DeRennzio*, 19 N Y 2d 45; *People* v. *Rensing*, —— N Y 2d —— (decided November 30, 1967); *Johnson* v. *New Jersey*, 384 U. S. 719; *Stovall* v. *Denno*, 388 U. S. 293).

In *Stovall* v. *Denno*, 388 U. S. 297, the Supreme Court set out the governing considerations in determining whether a fundamental change in constitutional interpretation should be applied retroactively:

"The criteria guiding resolution of the question implicate (a) the purpose to be served by the

[1] The conversations which were seized related in part to what was going to be done by the conspirators in light of Mr. Holtzman's refusal to capitulate to the lawless and disgraceful conduct of the defendant and his co-conspirators.

> new standards, (b) the extent of the reliance by law enforcement authorities on the old standards, and the effect on the administration of justice of a retroactive application of the new standards. '(T)he retroactivity or non-retroactivity of a rule is not automatically determined by the provision of the Constitution on which the dictate is based. Each constitutional rule of criminal procedure has its own distinct functions, its own background of precedent, and its own impact on the administration of justice, and the way in which these factors combine must inevitably vary with the dictate involved.' "

The standards outlined in *Stovall* are identical to the standards we have adopted in recent cases. In *People* v. *McQueen, supra,* we considered the effect that a retroactive application of the standards outlined in *Miranda* v. *Arizona,* 384 U. S. 436, would have on the administration of justice in our courts as well as the fact that the evidence which would be excluded under the *Miranda* rulings in no way affected the "'integrity of the fact finding process'' (*Linkletter* v. *Walker,* 381 U. S. 861). In so doing we overruled explicitly the case of *People* v. *Loria,* 10 N Y 2d 368, which had given retroactive effect to the exclusionary rule enunciated in *Mapp* v. *Ohio,* 367 U. S. 643, as to those cases still on direct appeal. The basis of the ruling was the existence of a so-called "general rule" which required that this court apply the law as it exists at the time of our decision. A careful examination of the cases cited in *Loria* reveal that there was no such general rule and that the same considerations we adopt here, in fact, governed all those cases in which retroactive effect had been given. (See *Knapp* v. *Fasenbender,* 1 N Y 2d 212; *Matter of Tartaglia* v. *McLaughlan,* 297 N. Y. 419; *Robinson* v. *Robin Dry Dock & Repair Co.,* 238 N. Y. 271; *Black River Regulating District* v. *Adirondack League Club,* 307 N. Y. 475; *Harris* v. *Jex,* 55 N Y 421).

Applying these standards in the case at bar, we are led to the conclusion that the *Berger* decision should be given only prospective effect. The purpose of the exclusionary rule, to which *Berger* made eavesdropping evidence subject, is deterrence of future police conduct. Applying *Berger* retroactively will not, therefore, undo the violation of the defendant's rights which may have already taken place. The admission of the wiretap evidence has no effect on the "integrity of the fact finding process" (*Linkletter* v. *Walker, supra*). Indeed, the probative value of the evidence is beyond question. In addition, thousands of eavesdropping orders have been issued in reliance upon the statute and the decisions of this court which the Supreme Court had seen fit not to disturb. (See *People* v. *Dinan,* 11 N Y 2d 350 cert. den. 371 U. S. 877; *People* v. *Cohen,* 18 N Y 2d 650 cert. den. 385 U. S. 976, rehearing den. 385 U. S. 1032). Moreover, even under prior law no eavesdropping order could be sustained without "the procedure of antecedent justification before a magistrate", which is central to the Fourth Amendment. Under these circumstances we hold that *Berger* should be held applicable only to those cases in which the orders were issued after the date of that decision.

The argument is advanced, however, that, since the statute was struck down as unconstitutional on its face, an order issued pursuant to it cannot be upheld. This argument is similar to that which has been rejected in all the recent decisions on retroactivity. The argument is that, if we hold that particular police conduct is now violative of an individual's constitutional rights, how can we say that the same conduct in the past did not likewise offend against his rights? Similarly if the offensive police conduct was authorized by a statute which is now found to be unconstitutional, how can we say that past conduct authorized thereunder was not equally violative of the defendant's rights?[2] The answer to both these questions is that logic

must sometimes give way to "reasons of practicality and necessity" (*People ex. rel. Keitt* v. *McMann*, 18 N Y 2d 257, 262). As this court observed in *People* v. *McQueen*, *supra*, "The past can seldom be reformed in the image of the present, and it is manifest that not every type of conviction can be set aside where the wisdom of the present does not coincide with that of the past."

Our discussion heretofore has assumed that *Berger*, in fact, brought wiretapping within the purview of the Fourth Amendment. A majority of the court, however, believes that, given the importance of the issue, the Court's failure to state clearly that wiretapping as well as bugging constitutes a violation of the Fourth Amendment and to overrule *Olmstead* v. *United States*, *supra*, expressly, is something more than a mere accident.

Unlike the bugging involved in *Berger*, wiretapping constitutes a violation of the Federal Communications Act. As a result, evidence obtained in violation of that statute has been held inadmissible in federal proceedings, irrespective of any possible Fourth Amendment violation (*Nardone* v. *United States*, 302 U. S. 379, 308 U.S. 338; *Benanti* v. *United States*, 355 U. S. 76). The Supreme Court has, however, refused to hold that the state courts are compelled to exclude such evidence (*Schwartz* v. *Texas*, 344 U. S. 199; *Pugach* v. *Dollinger*, 365 U. S. 458; *Benanti* v. *United States*, 355 U. S. 96). And, since the Court has continually adhered to its decision in *Olmstead* v. *United States*, *supra*, that the Fourth Amendment does not prohibit telephonic interception of messages accomplished without entry upon the caller's premises, the states have been free to permit the use of wiretap evidence in criminal proceedings.

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[2] There is language in our recent holding in *People* v. *Grossman*, 20 N Y 2d 346, which supports this reasoning. The retroactivity question was not argued in *Grossman* and we did not have an opportunity to reflect upon the most recent decision of the Supreme Court, *Stovall* v. *Denno*, *supra*. Any language in *Grossman* which is inconsistent with this opinion is expressly overruled.

Nevertheless, at least two of the Justices who made up the majority in *Berger* are on record as favoring rejection of past Supreme Court decisions and excluding all wiretap evidence in state proceedings (*Pugach* v. *Dollinger, supra* [dissenting opinion]).[3] A decision in *Berger* applying the Fourth Amendment protections to wiretapping would, however, have implied that evidence obtained through wiretaps would be admissible in state proceedings if the evidence was obtained in compliance with the provisions of the Fourth Amendment.

The *Berger* majority was apparently unable to resolve this problem.

Rather than become embroiled over collateral issues which were unnecessary to the decision in *Berger* and rather than formulate, contrary to "sound decision making principles," a constitutional holding which would amount to no more than dictum in any event (see *Stovall* v. *Denno*, 388 U. S. 293, 301), the court apparently determined to leave the resolution of the wiretap question to another case.

This analysis of *Berger* is, we believe, supported by a careful reading of the opinion of Mr. Justice Clark for the majority. The discussion of the *Olmstead* case is particularly instructive. To quote from the opinion:

> "The Court was faced with its first wiretap case in 1928, *Olmstead* v. *United States*, 277 U. S. 438. There the interception of Olmstead's telephone line

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[3] *Pugach* v. *Dollinger, supra*, the last case in which the Supreme Court spoke to the issue and upheld the admissibility of wiretap evidence in a state proceeding, the Chief Justice and Mr. Justice Douglas dissented and argued that all evidence obtained in violation of federal law should be excluded and that *Schwartz* v. *Texas, supra*, holding to the contrary, should be overruled. Mr. Justice Brennan concurred with the majority in *Pugach* but on grounds unrelated to the wiretap question. Mr. Justice Clark was with the majority in *Pugach* as well as *Schwartz*. These four judges along with Mr. Justice Fortas made up the five man majority in *Berger*.

> was accomplished without entry upon his premises and was, therefore, found not to be proscribed by the Fourth Amendment. *The basis of the decision was that the Constitution did not forbid the obtaining of evidence by wiretapping unless it involved actual unlawful entry into the house.* Statements in the opinion that 'a conversation passing over a telephone wire' cannot be said to come within the Fourth Amendment's enumeration of 'persons, houses, papers, and effects' have been negated by our subsequent cases as hereinafter noted. *They found 'conversation' was within the Fourth Amendment's protections,* and that the use of electronic devices to capture it was a 'search' within the meaning of the Amendment, and we so hold.'' (388 U. S. 50-51). (Emphasis added.)

While Mr. Justice Clark indicates that that portion of *Olmstead* which held that speech was not capable of seizure has been ''negated'' by subsequent cases, nowhere does his opinion state that the basis of the decision in *Olmstead* that wiretapping accomplished without an intrusion into the caller's premises infringes on no constitutional right—has been ''negated'' by any subsequent decision.

Indeed, as late as 1964 in *Clinton* v. *Virginia,* 377 U. S. 158, the Court adhered to the reasoning evolved in *Olmstead.* The Court reversed a conviction obtained by the use of eavesdropping evidence involving a trespassory intrusion into a constitutionally protected area (*Goldman* v. *United States,* 316 U. S. 129; *Silverman* v. *United States,* 365 U. S. 505). And lest anyone think that *Olmstead* was overruled, since the court wrote no formal opinion, Mr. Justice Clark wrote:

> ''Since the Court finds that the 'spiked' mike used by the police officers penetrated petitioner's premises sufficiently to be an actual trespass thereof, I join in the judgment.'' (377 U. S. 158).

The Court's apparent intention, to stick to a distinction which can survive only as long as *Olmstead* remains viable,

is evidenced in the closing paragraph of the *Berger* opinion. In attempting to allay fears that the *Berger* opinion would have the effect of outlawing all eavesdropping orders, Mr. Justice Clark cited *Goldman* v. *United States, supra,* as an apparent instance of eavesdropping which would remain unaffected. *Goldman,* involving an eavesdrop accomplished without a physical trespass, relied solely upon the reasoning in *Olmstead* and strongly reaffirmed that decision.

While there is language in *Berger* indicating that wiretapping may be held to be within the provisions of the Fourth Amendment this language hardly approaches the level of dictum and, since on the same day the Supreme Court decided *Berger* it enunciated the rule that "sound principles of decision making (require) . . . that constitutional adjudications not stand as mere dictum", (*Stovall* v. *Denno,* 388 U. S. 301), we conclude that *Berger* did not affect the wiretapping provisions of Code of Criminal Procedure § 813a and that its decision affected only that "language (which) permits a trespassory invasion of the home, by general warrant, contrary to the Fourth Amendment" (*Berger* v. *New York, supra,* p. 64) and that the defendant's constitutional rights were not violated.

There remains for our consideration the second argument advanced by the defendant that the evidence should have been excluded because it was obtained in violation of Federal Communications Act § 605. The Supreme Court has held, in the exercise of its supervisory powers over the federal courts, that wiretap evidence is inadmissible in federal prosecutions. The court has, however, held that the states are not required to exclude such evidence (*Benanti* v. *United States,* 355 U. S. 96, 101). The basis of this decision was outlined by the Chief Justice as follows:

> "[D]ue regard to federal state relations precludes the conclusion that Congress intended to thwart a state rule of evidence in the absence of a clear indication to that effect."

This statement, we believe, constitutes a complete answer to the argument advanced by the defendant that the wiretap evidence should be excluded in this state proceeding because its admission violates the federal statute. If Congress did not intend to thwart a state rule of evidence, we see no compelling reason to exclude the use of wiretap evidence.

The defendant argues, however, that the very interception of the telephonic communication violates federal law and that

> "At this time when the people of this state and country are being called upon to reaffirm their allegiance to the rule of law, it is a complete farce for the courts, prosecutors and police of this state to sanction such criminal behavior."

This argument is not without merit. If the issue were as simple as he suggests, a reversal would surely be mandated. Do we not, however, sanction criminal conduct and promote disrespect for law when we allow a man who is clearly guilty, who is convicted on the basis of evidence obtained in conformity with the strictest standards of the Constitution, to go free and menace the security of law abiding citizens? This is not to say that the ends justify the means and that proof of guilt sanctions violations of constitutional rights. But when the sole justification for the exclusion of evidence is that its admission will sanction criminal conduct and promote disrespect for law, we are obligated to consider whether the more desirable result will flow from excluding the evidence.

Moreover, we are dealing here with the violation of a statute which for its charged with the primary and exclusive responsibility for its enforcement have continuously refused to enforce against state officials who violate the statute. (Statement of Attorney General Robert F. Kennedy to Senate Judiciary Committee, March 29, 1962; State-

ment of Attorney General William P. Rogers, New York Times, December 24, 1957, p. 10 c. 1.) If the statute is viable let it be enforced. If the statute is flouted, let the offender be prosecuted. Because the constitutional provisions carried no penal sanctions to discourage violation exclusionary rules were necessary. No such problem is presented by a statute carrying penal sanctions.

In light of what can only be deemed a policy of nullification by federal officials, a state court, we believe, is justified in qestioning whether it should indirectly enforce a federal statute which the Executive has consistently refused to enforce—a refusal the Congress has impliedly sanctioned. As the Supreme Court once observed: "It would be a narrow conception of jurisprudence to confine the notion of 'laws' to what is written on the statute books, and to disregard the gloss which life has written upon it." (*Nashville, C. & St. L. Ry.* v. *Browning*, 310 U.S. 362). " 'Deeply embedded traditional ways of carrying out state policy. . . .'—or not carrying it out— 'are often tougher and truer law than the dead words of the written text.' " (*Poe* v. *Ullman*, 367 U.S. 497, 502).

Under these circumstances we decline to hold that wiretap evidence obtained in substantial compliance with the strictest provisions of the Constitution of the United States and of this state must be excluded in criminal prosecutions in this state.

We have thus far been concerned with eavesdropping pre-*Berger* v. *New York, supra.* In light of recent lower court decisions (See e.g., In re *Intercepting Telephone Communications*, ———Misc 2d ———, New York Law Journal, November 8, 1967 p. 22 c. 1) we feel it would be desirable to set forth what we believe to be the proper procedure as a result of the *Berger* decision. (See e.g., *People* v. *Huntley*, 15 N Y 2d 72).

We hold, in conformity with the traditional policy of this court to construe statutes in such a manner as to

uphold their constitutionality (*People* v. *Epton*, 19 N Y 2d 496; *People* v. *Finkelstein*, 9 N Y 2d 342; *Matter of Coates*, 9 N Y 2d 242; *People ex rel. Morriale* v. *Branham*, 291 N. Y. 312; McKinney's Cons. Laws of New York, Book 1, Statutes § 150, p. 237, n. 97, and cases cited therein) [4], and in conformity with our specific policy of construing section 813a so as to provide the same protections afforded by the Fourth Amendment, that, in addition to a showing of probable cause, an order issued under the statute must particularize to the extent possible the exact nature of the conversations sought, that it must provide for a return, that it must be severely limited in time, as outlined in *Berger*, and that it must provide for termination as soon as the conversations are seized. In addition, it should allege that exigent circumstances exist, viz. that the "destruction" of the object of the "search" will result unless the notice requirement is waived.

This rehabilitaion of the statute is possible even though the Supreme Court struck the statute down on its face. In *Dombrowski* v. *Pfister*, 380 U.S. 479, the Supreme Court enjoined the enforcement of a state statute on the ground that it was unconstitutional on its face. The action was taken at the behest of petitioners, who, like *Berger*, were found to have been "affected" by the statute, although not necessarily directly deprived of any rights thereunder.

The language of the court, in indicating taht the statute could be rehabilitated, is applicable here:

> "The State must, if it is to invoke the statutes after injunctive relief has been sought, assume the

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[4] As Chief Judge Fuld recently wrote, this court "when faced with the choice of declaring a statute unconstitutional . . . or interpreting the legislation in such a way as to supply a missing constitutional safeguard . . . [has never] hesitated 'to embrace [the course] which will preserve [the statute's] validity'" (*Bell* v. *Waterfront Commission of New York Harbor*, 20 N Y 2d 54,61).

burden of obtaining a permissible narrow construction in a non-criminal proceeding before it may seek modification of the injunction to permit future prosecutions." (380 U. S. 491)

In the case at bar no such special proceeding to obtain a limiting construction of the statute is necessary, as we do not deal with a criminal statute.

We conclude by noting that, as a result of our construction of the statute the people of this state are afforded greater protestion against *all* forms of electronic eavesdropping, including that which involves no trespass whatever, than even the decisions of the Supreme Court have provided. Yet much as we might like, we cannot ignore the realities of life. We cannot ignore the rise of organized criminal activity and "families" who promise to provide the true "big brothers" of 1984. As the facts in this case reveal, some intrusion under the most severely regulated and restricted conditions are necessary, lest the only security we enjoy is that from government intrusion. This was the conclusion of the President's Commission on Law Enforcement and Administration of Justice, 200-203 (1967) and it is our conclusion today.

We have examined the remaining arguments raised by the appellant and find that they do not warrant reversal (*People* v. *Kingston,* 8 N Y 2d 384).

The judgment appealed from should be affirmed.

Appendix A

COURT OF APPEALS

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

against

THOMAS KAISER,
Defendant-Appellant.

FULD, *CH. J.* (dissenting):

The decision which the court is now making, I suggest, disregards both the holding and the spirit of *Berger* v. *New York* (388 U. S. 41). The eavesdropping statute—section 813-a of the Code of Criminal Procedure—held invalid in that case is the very same statute under which the ex parte wiretapping order in the case before us was granted. The Supreme Court there ruled that section 813-a was "deficient" and unconstitutional "on its face" as an impermissibly broad and sweeping intrusion into the constitutionally protected area of individual privacy (388 U. S., at pp. 44, 55). If this language has any meaning, it is that the statute is invalid in its entirety insofar as it authorizes eavesdropping, whether the particular form of such eavesdropping be "bugging" as in *Berger* or wiretapping as in the present case. Moreover, there cannot be any doubt that the dominant considerations on which the *Berger* decision was predicated are equally applicable to both of these types of surreptitious interception.

The Supreme Court found the statute to be constitutionally "offensive" in at least four respects. First, it

improperly authorized eavesdropping "without requiring belief that any particular offense has been or is being committed" and, in effect, gives "the officer a roving commission to 'seize' any and all conversations" akin to the old repudiated "general warrant". Second, the statute's "authorization of eavesdropping for a two-month period [was] the equivalent of a series of intrusions, searches, and seizures pursuant to a single showing of probable cause". Third, "the statute place[d] no termination date on the eavesdrop once the conversation sought is seized." And, fourth, the statute "ha[d] no requirement for notice as do conventional warrants" and did not "provide for a return on the warrant thereby leaving full discretion in the officer as to the use of seized conversations of innocent as well as guilty parties" (pp. 59-60). "In short," the Supreme Court summed up the matter, "the statute's blanket grant of permission to eavesdrop is without adequate judicial supervision or protective procedures" (388 U. S., at p. 60).

Quite obviously, the defects which the court pointed to exist whether section 813-a be invoked as authorization for bugging or for wiretapping. In fact, the Supreme Court failed to make any distinction between bugging and wiretapping other than to observe that they were both forms of eavesdropping which developed at different times (388 U. S., at pp. 45-47). The court did, it is true, refer to its 1928 decision in *Olmstead* v. *United States* (277 U. S. 438) in which wiretapping, in and of itself, was held outside of the protective ambit of the Fourth Amendment. The court in *Berger*, however, expressly held that *Olmstead* was no longer sound law insofar as it differentiated between "conversation" and tangible property. The court thus noted that statements in the *Olmstead* opinion to that effect had been "negated" by later decisions which held that "the use of electronic devices to capture * * * ['conversation'] was 'search' within the meaning of the Amendment" (p. 51).

Appendix A

Although the court in *Berger* did not, in so many words, overrule the other basis for the *Olmstead* decision—that wiretapping did not per se entail a physical invasion of private premises—it is evident from a reading of the *Berger* opinion that that aspect, too, has little or no remaining force. The thrust of the *Berger* opinion, indeed its underlying theme, was that eavesdropping, the generic term encompassing wiretapping and bugging, is within the ban of the Fourth Amendment not because it may constitute a trespass in the technical sense but because "[b]y its very nature * * * [it] involves an intrusion on privacy" of unduly broad scope (388 U. S., at p. 56). "Few threats to liberty exist," the court declared (p. 65), "which are greater than that posed by the use of eavesdropping devices." In this regard, it is significant that both Justice Douglas, in concurring (p. 64), and Justice Black, in dissenting (p. 80), regarded the *Berger* decision as necessarily overruling *Olmstead* and that Justice White, in his dissent (p. 113), viewed the issues presented as not turning on whether it was bugging or wiretapping which happened to be involved.

Once it be determined that section 813-a of the Code is unconstitutional in its entirety, the impact of *Berger* may not properly be avoided by holding that it is not to be applied to cases (such as this) which come to our court in the normal course of the appellate process, even though the trials antedated that decision. I can add little to what Judge Christ has so ably stated on the subject in his dissent (Mimeographed Opinion, pp. 4-5) in *People* v. *Morhouse* (20 N Y 2d ——, also decided today). In Berger, the Supreme Court held that evidence obtained pursuant to section 813-a was the product of an illegal search and seizure in violation of the Fourth Amendment, and we have consistently held, with respect to such evidence, that the exclusion-

ary rule announced in *Mapp* v. *Ohio* (367 U. S. 643) should be applied "in our review of pending appeals," even though the trials took place before *Mapp* and were conducted in the light of the law as it then existed. (*People* v. *O'Neill*, 11 N Y 2d 148, 152; see, also, *People* v. *Loria*, 10 N Y 2d 368, 371; *People* v. *Muller*, 11 N Y 2d 154.) In *People* v. *McQueen* (18 N Y 2d 337), it is true, the court declined to give retrospective application to the new rules enunciated in *Miranda* v. *Arizona* (384 U. S. 436) concerning the use of confessions obtained by police interrogation but we neither held nor intimated that our prior practice in search and seizure cases should be modified. In point of fact, just a few months ago—and of course, after *McQueen* (18 N Y 2d 337, *supra*)—our court in *People* v. *Grossman* (20 N Y 2d 344), involving the very statute now before us, wrote that, since *Berger* had held section 813-a unconstitutional, "it is as if there had never been any valid authority for the police to act as they did" (p. 349).[1] To change the practice to the prejudice of the defendants now before us (Kaiser and Morhouse) is highly unfair, if not unconstitutional smacking as it does of unequal protection of the laws.

Although there may be some situations in which prospective application of a new rule may be dictated by the fact that the police placed "reliance" on old rules or prior decisions, the present is not such a situation. The Supreme Court, it is true, had not previously ruled that evidence obtained by means of wiretapping could not be used in a state court. But it had, repeatedly and for many years, held that the tapping of telephone wires and the disclosure of the contents of the communications intercepted consti-

[1] The majority avoids this pronouncement by blandly declaring (Mimeographed Opinion, p. 13, n. 2) that "[a]ny language in *Grossman* * * * inconsistent with this opinion is expressly overruled"!

tute a crime under section 605 of the Federal Communications Act. (See, e.g., *Benanti* v. *United States*, 355 U. S. 100.) Manifestly, in such a situation, the prosecution should not be permitted to make the criminal conduct of its agents a basis for a claim of "reliance" on the prior state of the law.

As the majority here acknowledges, the order permitting the wiretap in the present case contained many "defects" (Mimeographed Opinion, p. 10) of the kind which the Supreme Court in *Berger* held to be violative of essential constitutional safeguards. Thus, the order broadly authorized the interception and recording of "*all telephone communications made by* and to Salvatore Granello, Dino Conte *and any and all other persons* communicating by both incoming and outgoing calls over the telephone located at 255 W. 43rd Street, New York County, New York * * * [*from July 1*] *until the 29th day of August, 1965.*"[2] As is manifest—and I cull from the opinion in *Berger* (388 U. S., at p. 59)—the effect was to give the officer "a roving commission", on the order of a general warrant, "to 'seize' any and all conversations" (p. 59). Moreover, the order, as indicated, was to be effective for two months, a length of time expressly condemned by the Supreme Court in *Berger;* as the court pointed out, "authorization of eavesdropping for a two-month period is the equivalent of a series of intrusions, searches, and seizures pursuant to a single showing of probable cause. * * * During such a long and continuous (24 hours a day) period the conversations of any and

[2] The order further provided that the Nassau County District Attorney or his agents were "authorized and empowered to cut, break, tap, and make connection with any and all wires leading to and from said telephone instrument that the said District Attorney * * * [and a named assistant district attorney] or their agents may deem reasonably necessary to intercept telephone communications transmitted over the said wire."

all persons * * * will be seized indiscriminately and without regard to their connection with the crime under investigation" (p. 59). And, since its success necessarily depends on secrecy, the procedure authorized by the order has—and I again quote from the *Berger* opinion (p. 60)—"no requirement for notice as do conventional warrants" and does not "provide for a return on the warrant thereby leaving full discretion in the officer as to the use of seized conversations of innocent as well as guilty parties."

The majority has attempted to overcome the objections voiced in *Berger* by a suggested retrospective interpretation of section 813-a to narrow the unconstitutionally broad reach of that statute. As support for this suggested "rehabilitation" of the section, the majority points to *Dombrowski* v. *Pfister* (380 U.S. 479), where it was held that a criminal statute, concededly unconstitutional on its face, could not be enforced "until an acceptable limiting construction is obtained" (p. 497). I cannot agree that the majority's suggested interpretation is "an acceptable limiting construction". It has done nothing more than to outline, in general terms, the limitations which it proposes to read into the statute. The implementation of the suggestion is apparently to be left to future judicial decision. The Supreme Court in *Berger* made it plain that it would not uphold any legislation authorizing eavesdropping which did not embody " 'precise and discriminate' requirements" sufficient to comply with the strict demands of the Fourth Amendment (388 U.S., at p. 58). The limitations here proposed are entirely too vague and indefinite to satisfy that criterion. Actually, the proposed "rehabilitation" would consist not merely of grafting "a missing constitutional safeguard" on to the statute, as was the situation in *Matter of Bell* v. *Waterfront Comm.* (20 N Y 2d 54, 62; see, also, *People* v. *Epton*, 19 N Y 2d 486), but of completely rewriting the statutory language and adding, under the

guise of construction, matters of detail which, of necessity, must be left to the Legislature.

In this connection, I must say that I do not understand how this court may legitimately fashion a "procedure for wiretapping and for the issuance of orders permitting such wiretapping. The Legislature has outlawed all wiretapping except that authorized by section 813-a (see Penal Law, § 205.00, subd. 3; § 205.05 [formerly §§ 738, 739]) and has expressly provided in CPLR 4506 that evidence obtained by wiretapping (or other eavesdropping) without a court order issued pursuant to that statute, "shall be inadmissible for any purpose in any civil or criminal action". Beyond that, since the revisers of our Code of Criminal Procedure have already drafted and proposed an article (art. 370), to replace section 813-a, which "precisely set[s] forth the forms and procedures to be followed at each phase of eavesdropping, from application, through termination, to judicial record-keeping" and contains "a number of restrictions in the utilization of eavesdropping not previously found in New York law nor specifically called for in the *Berger* decision,"[3] it seems to me unwise, if not mischievous, for a court to undertake to assume what is a strictly legislative function.

Further, and quite apart from the combined impact of the *Berger* decision and CPLR 4506, I am more than ever confirmed in the view I expressed in dissent in *People* v. *Dinan* (11 N Y 2d 350, 356) that all evidence obtained

[3] See Proposed New York Criminal Procedure Law [Temporary Commission on Revision of the Penal Law and Criminal Code], art. 370, p. 401. The Staff Comment recites that "this article provides a comprehensive scheme for the restricted issuance of eavesdropping warrants, based upon strict standards of probable cause and necessity, and demanding scrupulous particularity in the description both of the person and place upon which the eavesdropping is to be conducted and the nature of the evidence sought thereby."

through wiretapping should be excluded on the ground that its very introduction in open court constitutes a Federal crime in violation of section 605 of the Federal Communications Act. (See, also, *People* v. *McCall*, 17 N Y 2d 152, 150, concurring opinion; *People* v. *Cohen*, 18 N Y 2d 650, 651, dissenting opinion.)

In sum, then, since section 813-a has been invalidated and stricken in its entirety, no authorization existed for the ex parte order permitting wiretapping in this case. Consequently, CPLR 4506 requires the exclusion from evidence of the conversations intercepted by means of such wiretapping.

The judgment appealed from should be reversed and a new trial ordered.

* * *

Judgment affirmed. Opinion by KEATING, *J.* All concur except FULD, *Ch. J.*, who dissents and votes to reverse and order a new trial in an opinion.

APPENDIX B

Ex Parte Hearing Upon the Application for the Wire Tap Order

Petition of Norman J. Levy, Assistant District Attorney:

COUNTY COURT

NASSAU COUNTY

In the Matter of the Application of NORMAN J. LEVY*, an Assistant District Attorney of the County of Nassau

for

an Order for Interception of Certain Telephone Communications
212 LW 4-2523

The Petition of *Norman J. Levy* respectfully shows and alleges:

1. That your petitioner is over twenty-one years of age and resides at *120 Wynsum Avenue, Merrick,* Nassau County, New York, and that since *January 12, 1959* your petitioner has been and is an Assistant District Attorney of Nassau County.

2. That your petitioner is actively engaged in the investigation of crimes committed in violation of the Penal Law of the State of New York, and particularly in the

* This is a form affidavit, and the filled in blanks are designated by italics.

investigation of the crimes of *Attempted Extortion, Conspiracy to Commit the Crime of Extortion and Conspiracy to Commit a Crime which your petitioner* has good and sufficient reason to believe is being committed in Nassau County, New York.

3. That in connection with the aforesaid investigation, petitioner has been conducting an investigation of the criminal activities of *Salvatore Granello, Dino Conte* and John Doe and Richard Roe (said names of John Doe and Richard Roe are fictitious; their true names and identity being unknown to your petitioner) who, your petitioner is informed and believes, have been and are engaged in criminal activities in connection with the aforesaid crime, and who, either as participants or as material witnesses, have knowledge or information regarding said crime and are in communication by telephone with other persons having such knowledge and information.

4. That *Headline Bar*, has a telephone at *255 West 43rd Street, New York County, New York*, the number of which is *212 LW 4-2523* and that your petitioner is informed and has reason to believe that the said telephone and the communications made over said telephone by the said *Salvatore Granello, Dino Conte* and other persons who use said telephone, are the means of carrying on and promoting criminal activities; and petitioner is informed and has reason to believe that evidence of crime may be obtained by intercepting telephone communications being transmitted over the aforesaid telephone instrument, such crimes being in violation of the Penal Law of the State of New York.

5. That no previous application has been made for the order herein applied for.

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WHEREFORE, your petitioner prays that an order be made herein under and pursuant to the provisions of Article I, Section 12, of the Constitution of the State of New York and the statutes relating thereto, and under and pursuant to the provisions of Section 813-a of the Code of Criminal Procedure of the State of New York and the statutes relating thereto, authorizing and empowering the District Attorney of Nassau County and your petitioner as an Assistant District Attorney of Nassau County, and any and all persons employed or assigned to the control and direction of the District Attorney of Nassau County or of your petitioner as such Assistant District Attorney of Nassau County to intercept and record all telephone communications made by and to the said *Salvatore Granello, Dino Conte* and any and all other persons communicating by both incoming and outgoing calls over said telephone located at *255 W. 43rd Street, New York County, New York,* now designated as *212 LW 4-2523* from the date of making of such order until, up, to, and including *the 29th day of August, 1964.*

NORMAN J. LEVY,
Petitioner.

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STATE OF NEW YORK
COUNTY OF NASSAU } ss.:

NORMAN J. LEVY, being duly sworn, deposes and says:

That he is the petitioner named in and who signed the foregoing petition. That he has read the said petition and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief; and that as to those matters he believes it to be true.

NORMAN J. LEVY.

Sworn to before me this
30th day of June, 1964.

NOTARY PUBLIC, STATE OF NEW YORK.
(Notary's signature and seal indistinguishable on copy.)

Appendix B

DISTRICT ATTORNEY'S INVESTIGATION

RB 2-27-64

212-LW-4-2523

In the Matter of the Application of NORMAN J. LEVY, an Assistant District Attorney of the County of Nassau,

for

an Order for Interception of Certain Telephone Communications

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County Court, New Courthouse,
Mineola, N. Y., July 1, 1964.

Before:

HON. HAROLD M. SPITZER,
County Court Judge.
(In Chambers)

Appearances:

NORMAN J. LEVY, Assistant District Attorney.

DONALD J. WHITE, CSR.,
DA Confidential Reporter.

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NORMAN J. LEVY, being duly sworn by the Court, testified as follows:

By the Court:

Q. State your name and address. A. Norman J. Levy, 120 Winsum Avenue, Merrick, New York. I am an attorney duly licensed and admitted to practice law in the State of New York.

I am and have been an assistant district attorney of Nassau County since January 12, 1959, and I am Chief of the District Attorney's Rackets Bureau.

Since June 8, 1964, I have been conducting an investigation of the crimes of attempted extortion, conspiracy to commit the crime of extortion, conspiracy to commit a crime and felonious assault.

On June 8, 1964, I had a conversation wtih Irving Holzman who resides at 55 Sycamore Drive, Roslyn, New York. Mr. Holzman resides at 55 Sycamore Drive, Roslyn, with his wife, Mrs. Ruth Holzman.

Mr. Holzman's business is United East Coast Corporation which is located at 583 Tenth Avenue, New York 36, New York He also maintains a business in the County of Nassau and that busines is located at 243 Northern Boulevard, Great Neck.

The nature of Mr. Holzman's business is that he is a distributor of automatic coin machines, juke boxes, game machines, and he is the owner of routes of automatic coin machines locations, juke boxes, game machines and cigarette machines.

Mr. Holzman told me that a principal of one of his juke box routes is one Robert Luttman. Mr. Luttman is also employed by Mr. Holzman as an adjustor and his duties as an adjustor are to adjust problems that arise in connection with automatic coin machine locations that are owned by Mr. Holzman in connection with Mr. Luttman, himself and with others.

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Mr. Holzman told me that he became aware that Luttman had gone to a location in the Bronx, the Calypso Lounge, in the end of May, 1964, to adjust a location on behalf of Mr. Holzman. At that location in the Bronx a competitor Jet Automatic, was seeking to take over a location belonging to Mr. Holzman wherein he had placed an automatic coin machine.

Mr. Luttman went to the Calypso Lounge and spoke with the owner of the premises, and the basis of Mr. Holzman's knowledge is a conversation he had subsequently with Mr. Luttman. This is in regard to the Calypso Lounge.

Mr. Holzman said that Luttman told him that in seeking to keep the location for Mr. Holzman that he, Luttman, had told the owner of the Calypso Lounge that one Sally Burns was with Mr. Holzman and Mr. Luttman in that location.

Mr. Holzman identified the name Sally Burns as an alias of one Salvatore Granello. Salvatore Granello resides at 215 Mott Street, Apartment A-1 in the Borough of Manhattan in New York City. Salvatore Granello is known through the Intelligence of the District Attorney's Rackets Bureau and Central Intelligence Bureau of the New York City Police Department to be a member of Cosa Nostra.

He is a member of the Thomas Luchesse, alias Three Finger Brown, Family of Cosa Nostra. He is presently under indictment by the federal government, Southern District of New York, and he's charged with income tax evasion.

He's out on bail pending the trial of his case. He has previously been arrested in Orange County for the crime of rape, and he is awaiting trial on that indictment in Orange County.

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Mr. Holzman told me that he informed Mr. Luttman that he had had no right to use Sally Burns name in connection with that location or any other location.

Mr. Holzman said that on June 4, 1964, a Thursday, a man came to his New York office located at 583 Tenth Avenue, New York and identified himself as Dino Conte.

Mr. Holzman told me that he believed Conte was a relative of one of his upstate New York customers and as a result spoke with Conte in his office.

At this time Holzman said that Conte indicated that he had been sent by Sally Burns to talk to Holzman. Conte said to Mr. Holzman at that time, "Do you know Charles Morel? Do you know that Playmore is jumping Charles Morel's locations?"

Conte then said to Mr. Holzman, "We're not interested in Morel but the people Morel is with."

A previous investigation by the District Attorney's office has ascertained that Mr. Morel is a principal of Local Vending and that another principal of Local Vending and partner of Mr. Morel's is one Mike Miranda.

Through our intelligence information Michael Miranda has an arrest record. He's previously been arrested twice for homicide. Both of these charges were dismissed. He has a New York City Police Department B # 129648.

He resides at 167 Greenway North in Forest Hills. Mr. Miranda, according to sworn testimony by Joseph Valachi before the Senate Investigating Committee, is one of the National Commissioners of Cosa Nostra, and he's the advisor or consigilliare to Vito Genevese and the Vito Genovese family of Cosa Nostra.

This information, your Honor, is borne out by our own intelligence information and the fact that Mr. Miranda is a partner of Mr. Morel in Local Vending.

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By the Court:

Q. Conte said something about Charles Morel jumping locations? A. No, your Honor. Conte said that Playmore was jumping Morel's locations and he said to Mr. Holzman, "We're not interested in Morel, but the people Morel is with."

Q. Who is Playmore? A. According to our investigation the principal of Playmore, which is also an automatic coin machine partnership or corporation, is one Harold Kaufman.

Conte at this time asked Mr. Holzman if Holzman was a partner with Playmore. Mr. Holzman informed Conte that he was not.

At this time Conte said to Mr. Holzman, "We know that you bought out your partner's estate and that you now own Long Island National," which is another juke box operation that Mr. Holzman owns.

He had been a partner in this jukebox operation until his partner, one David Simon, died and he had bought Simon's interest out from the estate.

At this point, according to Mr. Holzman, Conte said to him, "You used Sally's name. He doesn't mind, but people are saying you're Sally Burns' partner."

Mr. Holzman told me that he told Conte, "I never used Sally Burns' name; one of my employees did, and he told me he was authorized to use Sally Burns' name."

At this point Mr. Holzman said Conte said, "No one is authorized to use Sally Burns' name." Conte then said to Mr. Holzman that Burns wanted to have dinner with Holzman that evening.

Holzman told me that he then said to Conte, "You just come in off the street. You tell me you know Sally Burns. How do I know that you know Sally Burns?"

Holzman then started to walk to the telephone and he told Conte that he would call Sally Burns directly and

speak to him on the telephone. At that point Holzman said Conte said, "Don't do that." He, Conte, would have Sally Burns contact Holzman within the next hour.

Mr. Holzman said that approximately two hours passed and he then received a telephone call from Sally Burns at his office at 583 Tenth Avenue, New York. During the course of this conversation Burns invited Mr. Holzman to have dinner with him that evening and Mr. Holzman told me that he advised Burns that he would be unable to meet with him that evening.

They then discussed having lunch the next day, Friday, June 6, 1964. Burns asked Mr. Holzman to meet him for lunch at the Charles Restaurant on Sixth Avenue in Manhattan.

Mr. Holzman told me that he told Burns that he was too busy to meet Burns at the Charles Restaurant, but that Burns could come over to Mr. Holzman's office on Tenth Avenue and have lunch with him.

An appointment was made for the next day. Mr. Holzman said that on June 5, 1964, he was in his office at Tenth Avenue and that Burns did not come to his office for lunch, nor did he call him and inform him that he wasn't coming.

On Monday, June 8, 1964, Holzman told me he left for his Manhattan office at approximately 7:40 A.M. Approximately five minutes after he left for work his wife, Mrs. Ruth Holzman, stated that a man rang her doorbell and said that he was from United Parcel.

At this time she was upstairs in their home at 55 Sycamore Drive in Roslyn. She came downstairs to answer the door.

When she opened the front door the unknown man already had the storm door open and he shoved her backwards and she fell to the floor.

According to Mrs. Holzman she stated that the man put his left hand over her mouth and asked her, "Where is your husband?"

She started to scream and during the struggle the man, who had been wearing glasses lost his glasses. When they fell to the floor she grabbed the glasses and held them under her.

During the course of the struggle the man pulled a gun and when she started to scream a neighbor came to her assistance and three men who had been waiting outside the home informed the man who was inside the home that the neighbors were going to call the police, that the cops were coming. "Let's get out of here."

At this time the man who was in the house left the house and the men got into the automobile and left the scene.

Mr. Holzman said that when he arrived at his office—

Q. Excuse me for interrupting you. A. Yes, your Honor.

Q. Was this assault reported to the police? A. Yes, it was.

Q. And is it under investigation? A. It is under investigation at this time, your Honor.

Q. Has the neighbor referred to been interviewed? A. Yes, she has.

Q. And does she verify these facts? A. Yes, she does, your Honor. And that matter is under investigation jointly by the Sixth Squad of the Nassau County Police Department and the office of the District Attorney of Nassau County.

Mr. Holzman informed me that he arrived at work that morning at approximately ten a.m. Strike that.

Mr. Holzman informed me that when he arrived at his office he was told by a business associate to call home right away.

He called his home and was informed by his son-in-law, Ronnie Billing, what had happened to his wife and he was to come—he was told to come right away.

He drove to his home and after arriving there at approximately 12 p.m., one of his employees, one Lou Drutman, called him and advised him that Sally Burns had been at this office, Holzman's office in New York, and had said that he'd heard on the radio what had happened to Ruth.

Drutman told Holzman that Burns had left a phone number for Holzman to call Burns at. Drutman gave Holzman the telephone number, 212-LW-4-2523.

The subscriber of this telephone is the Headline Bar, Eighth Avenue and 43rd Street, New York City. The exact address of the Headline Bar is 253 West 43 Street, New York County.

At that time from his home Holzman called 212-LW-42523 and asked for Sally Burns. Burns spoke to him on the telephone and instructed Holzman to go to an outside phone and call Burns at 212-LW-4-2523, the same number.

Holzman told me that he went to a neighbor's telephone and again called Burns at the same number. Holzman said that he said to Burns over the telephone, "Did you hear what happened to my wife?"

Holzman said that Burns replied, "I know all about it." At this point Burns asked Holzman to come to New York to meet him at the Charles French Restaurant, 452 Sixth Avenue, Manhattan.

Holzman said that he advised Burns that he didn't want to leave his wife and he wanted to know why Burns wanted to see him.

Holzman said that Burns told him that he wanted to talk to him about what happened to Holzman's wife. Holzman said that he asked Burns to tell him over the telephone and Burns said, "Meet me. Don't talk about it on the telephone."

Holzman said that he and his son-in-law, Ronald Billing went to the Charles French Restaurant, 452 Sixth Avenue in New York and arrived there at approximately three p.m.

Holzman said that Burns asked his son-in-law to wait at the bar while he spoke to Holzman. Holzman said that

he and Burns sat at a table at the Charles Restaurant and Burns said to him, "It's around the industry that you're in the million dollar class, you're the biggest man in the industry.

No one gets in that class unless he has someone with him."

Holzman said that at this time he interrupted Burns and said, "I thought you were going to tell me about what had happened to my wife?"

He said that he asked Burns, "Did you hear about it on the radio" and that Burns replied, "No, I didn't hear about it on the radio; never mind how I heard about it."

At this point Burns said to Holzman, "If you had met me Friday I wouldn't have forgot to come to you and this wouldn't have happened. If I had come home Sunday from Greenwood Lake instead of Monday this wouldn't have happened.

"The people I'm with are animals. They couldn't wait until I came home."

Holzman said that Burns then stopped talking about his wife and said to Holzman, "Even Costello had to give up a piece."

"Now, with you the family wants $25,000 in cash and I want you to give it to to them."

Burns then said to him, "I would never mention the word, 'family' but with you I have no worries and I want 25 per cent of what you have—not what your partners have—just you."

Burns said to him, at the end of each week he and Burns would meet and have dinner and for every dollar Holzman took in he would keep 75 cents and 25 cents would go to Burns.

He told Holzman, "If at the end of the week you have $1 left I take 25 cents and you keep 75 cents."

At that time Burns asked Holzman for an answer and he told him that he couldn't give him an answer at that time, he'd have to think about it.

Burns then asked Holzman to meet him the next day, Tuesday, June 9, 1964, at the Charles Restaurant.

That evening, Monday, June 8, 1964, myself, District Attorney Cahn and Detective Shephard and Detective Costello were advised of the meeting between Burns and Holzman at the Charles Restaurant.

Holzman also stated that as he was leaving the meeting with Burns that had taken place at the Charles Restaurant he observed Dino Conte in the bar of the Charles Restaurant. He had no conversation with Conte at that time.

Holzman stated that the meeting to take place on Tuesday, June 9, 1964, at the Charles Restaurant with Salvatore Granello, alias Sally Burns, was set for 12 o'clock noon.

The next day at approximately 12 o'clock noon Holzman in my presence called the Charles Restaurant and spoke to Sally Burns. He asked Burns if he should go out to an outside telephone and call Burns back. Burns said that he wanted Holzman to do that.

Holzman then went to an outside telephone in the presence of myself, Assistant Chief Inspector James Farrell of the Nassau County Police Department, Lt. Frank O'Shea of the Nassau County Police Department, Commanding officer of the Sixth Detective Squad, and Nassau County Detectives Harold Shephard and Clifford Crawford, both of whom are assigned to the District Attorney's Squad.

At that Holzman placed a telephone call to the telephone number 212-GR 7-3300. The subscriber of that telephone number is the Charles French Restaurant, Inc., located at 452 Sixth Avenue, New York City.

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This telephone call was made from the Oaks Pharmacy in Roslyn, County of Nassau, State of New York, and the telephone call was monitored and recorded with the permission of the owner of the Oaks Pharmacy.

Q. Holzman knew about it too, I assume? A. And Mr. Holzman. In this conversation Mr. Holzman asked for Sally Burns and Burns got on the telephone.

Mr. Holzman told Burns that someone had been in the phone booth and he had to wait.

Holzman then said to Burns, "On that conversation yesterday, you know, first of all, I don't have any method of raising $25,000 for the family and I think that that should be reduced.

"I think that your request is a little bit out of line."

That he, Holzman, had put in 26 years in this business and that was a big chunk to give away.

Burns said to Mr. Holzman, "Alright, let me say this to you. You know the way I feel about you and I feel worse than you do about what happened, and I want you to know that's an outside faction."

Burns said that he would explain it to Holzman when he saw him. Burns said that it wasn't his people, his friends.

Burns told Holzman that he would explain to Holzman what was involved and what the past history was to this thing.

Burns said to Holzman, "Between you and I as far as a lot of things that have transpired where I was mentioned, et cetera, and so on, to me it's unimportant.

"I'd like, I'd like, I'd love to be with you and I want you to be with me, but I want to start off right.

"If you feel that you want me— Do you want me to be with you?"

And Holzman said to Burns, "Well, I told you yesterday that with you I could get along but as far as these

fancy figures for me to go on financing and stuff like that and to have to, you know, the thing is it don't add it up, Sal, it just don't add up."

Burns then said, "Well, then I will tell you what you better do, Irv.

"The first thing to do, Irv, the best thing to do if you feel that way about it, 'cause I want to explain, see, I would, I would help you in that situation myself.

"I don't want to come in there for nothing, you understand. I don't want to come in there for nothing, but I must explain to you better than I did yesterday what the, what it involves and how many different—

"There are different elements involved here, you know, that wanted to take a shot at you.

"You understand what I'm talking about?"

Holzman said, "Yes, but that deal yesterday, that is the worst part, you know, I can't understand why you couldn't have stopped that."

And Burns said, "Well, no, no, I will explain you that, too. This was an outside thing where other people wanted to come into the picture.

"Now, the thing is either I have to know that I'm in there or I'm not in there, and I'm not pushing you, take it easy and take care of her. That's more important.

"That is why I suggested for you to have dinner together and I think—"

And Holzman said, "Well, of course—"

And Burns continued and said, "—you'll feel better."

Then Holzman said, "I know first of all she's marked up pretty bad and I don't know when she'll be able to walk out of the house."

And Burns said, "Alright."

And Holzman said, "Whoever that was—"

And Burns interrupted him and said, "Alright, I will take care of that in my own way. You'll have satisfaction through my way, you understand, which I don't care to discuss on the phone.

"Let me take care of it and you will be very satisfied. I will take care of it my way because I found out more about the story.

"It wasn't my friends involved here. It was friends, but from other people."

Holzman then said, "Yes."

And Burns said, "If you understand what I'm talking about, I will take care of that. I'll have the satis—you'll have satisfaction there my way, understand?

"But as far as the deal what I want to do with you, Irv, I think you should come in today."

Holzman told Burns that he couldn't come in, and Burns said, "You can't?"

And Holzman said, "I can't leave her today. If I leave her I ain't going to have a wife, you know."

And Burns said, "No, no, that's more important. If she feels that way you stay home, but I would like you to come down, sit down and you and I, I think we can work the whole thing out. It could be worked out."

And Holzman interrupted and said, "Well, listen—"

And Burns continued, "It's bad for you to—I'm sorry—and, uh, if it can't be, it can't be, it's alright.

"Either way, whatever you say. You mean that you want to forget it?"

Holzman said, "Well, I—"

And Burns said, "I wouldn't want you to do that, believe me, as your friend I don't want you to do that."

Holzman said, "Well, Sally, look, the first request is way out of line. I just got through buying out an estate and I have no means of going out to raise that kind of money in cash.

If I have to go out and borrow it they're not, nobody is going to lend it in cash."

And Burns said, "Let me say this to you. We'll work that out because I could help you in that situation myself.

"I'll be part and parcel of it with you and when I explain it to you you'll know what I'm talking about, you understand?"

Burns then asked Holzman to again come in and visit him and Holzman said, "You know last night I was a little bit upset with the whole situation, you know, especially after I left you.

"I became upset myself. The thing is getting so that what's the sense of knocking your brains out if these things are going to happen?"

Burns said, "Well, there ain't nothing going to happen. That is what I want to eliminate, and that is the missing link with you, Irving, and you can believe what I'm telling you.

"Then you can do what you want. You can do anything you want. I told you that.

"As far as I'm concerned I think I'm a necessary evil in this situation and the way it will clarify everything all the way around and we can go forward.

"There'll be no nonsense involved and nothing else, and I'm telling you."

And then Holzman again told him, "I think that the 25 thousand is way out of line."

And Burns said, "The figure can't be changed, but here's what I'm going to do.

"I'm going to do something on my own to work it out."

And Holzman interrupted and said, "Sally, they've got to change the figure. I'm not going to go for $25,000. I told you yesterday.

I know I can deal with you but I'm not going to go for $25,000."

And Burns answered, "Look, you've made your mind up definitely that way, then there is no sense even meeting if you don't want to."

And Holzman said, "I don't say I don't want to meet but I say I'm not going for 25."

And Burns said, "But I want to explain to you, I'll do my best for what I have to do. I know what I have to do, but I can work it out.

"I told you I could work it out."

Burns then said, "Let me sit down with you and we'll discuss it and then maybe I'll go there and say, 'Look, this is what I'm going to do, I'm going, I am doing it on my own, this is for me,' maybe it will be a little different picture, but I can't pick your brain.

"I got to sit down and talk to you, you and I together."

Burns then asked Holzman to again meet him the next day and Burns gave Holzman his home telephone number CA 6-2638, and asked Holzman to call him the next morning at 10 o'clock and let Burns know whether Holzman could meet him at noon at the Charles Restaurant.

Burns said, "You just talked to me in the morning. I'll tell you what to do, call me tomorrow morning at 10 o'clock home," and further told Holzman, "Go outside and call me, and tell me if you's coming in and I'll meet you at 12 o'clock at Charles."

Burns then told Holzman, "If you want to call me, call me tonight," and Holzman asked him:

"Where? At home?"

And Burns told him, yes, he'd be home, but if he wasn't home to call him at this other number, CAnal 6-8509.

Burns told Holzman that, "That's Patrissy's; remember the restaurant downtown, the one on Kenmare Street," and he again gave Holzman the number CAnal 6-8509.

Thereafter, Burns gave Holzman another telephone number.

He said to him, "And the other number I gave you yesterday, I go there once in awhile for a drink, you know."

And Holzman said, "Is that the LW number?"

And Burns said, "LW."

And Holzman told him that he had that number.

Holzman then told Burns, "I'll call you in the morning."

On June 10, 1964, Holzman called Burns at CAnal 6-2638, the code number was 212. CAnal 6-2638 checks to Nancy

Granello, 215 Mott Street, Apartment A-1, New York County.

Nancy Granello is known to be the wife of Salvatore Granello, and this is Granello's residence.

The telephone number 212-CA-6-8509 checks to the subscriber Patrissy's Restaurant, 96 Kenmare Street, New York, New York County.

On June 10, 1964, when Holzman called Burns at his home he told Burns that he would call him at 12 o'clock at the Charles Restaurant.

Holzman didn't call Burns at the Charles Restaurant at 12 o'clock on June 10, 1964, and thereafter, during the afternoon of June 10, 1964 Dino Conte called Holzman at his home and told Holzman that Sally was waiting for Holzman's call and told Holzman further, "Well, you should call him and let him know if you want to see him or don't want to see him, 'cause he's waiting."

Conte told Holzman that Sally had left the Charles Restaurant and was now at the LW number. Holzman then called 212-LW-4-2523, the Headline Club, and spoke with Sally Burns.

Burns asked Holzman what happened and Holzman told him, "Do you know Dino just called me. I didn't want to call you.

"I'm upstairs you know. Bill Cahn posted a man here 24 hours. I don't want to call you from home with a guy sitting in."

Burns told Holzman, "Why don't you take a ride out? Two minutes. You know I waited for your call."

Holzman told Burns, "Well, the man goes with me, that's what Cahn told him to do."

And Burns answered, "Irving, look, I know you're home. It's allright. Do you want to see me or you don't want to see me."

Holzman said, "Well, I'm not coming into New York for a couple of days and I'm staying here."

Burns then said, "I would like to see you on this one way or the other. I know what you want me to do and I'll know what you want me to do, and I'll get away from the picture altogether."

And Holzman told Burns that he'd see him when he came into New York and as soon as he came into New York.

Holzman told Burns that he would be in New York on Monday. Burns told Holzman, "I understand, but at the same token you know when I tell you, Irving, I waited for you, I don't go no place, I wait for you." Holzman told Burns he was sorry.

Burns said to Holzman, "It's important to me, too, you know what I mean."

Holzman said, "I was doing this for you, not for me." And Burns said, "Okay, buddy. Look, try to get in touch with me Friday morning."

Holzman said, "If not, you will hear from me."

And Burns said, "I go up to the country."

And Holzman said, "If you go up to the country you will hear from me Monday before 12 o'clock."

And Burns said, "In fact, I'll tell you the truth, what I would like you do Saturday or Sunday, put Ruth in a car and come up to the house and stay the whole day with me and she'll be a new woman; that's what I would like you to do."

And Holzman said, "Well, where is this place?"

Burns said, "It's in Greenwood Lake."

Holzman said, "Greenwood Lake is a big place."

Burns said, "Well, I could give you the whole instructions. You come right over the mountain and in fact, Dino will come with you and show you the place."

Holzman said to Burns, "Let me put it this way. If I can convince her to go up I will call you Friday morning at the house."

Burns said to Holzman, "Well, you do that, call me and give her my love."

Holzman said to him, "And don't forget I didn't call because—" And Burns interrupted him and said, "Allright, but I wanted to hear from you, Irving."

"You know how I am when I do something, I do it right."

Holzman said, "But you know where I am, too."

And Burns said, "Allright, I don't care. I don't care who's there, and who's not there. With me I'm one way.

"If I have to do something for you I'll do it, and if we don't want to do it, forget about it.

"So you call me Friday morning. If you come in early call me."

And that was the end of the conversation.

On Monday, June 15, 1964, Holzman met with Burns at his New York office at 583 Tenth Avenue, New York. The meeting was set up after a telephone call from Holzman to Burns at Burns' home, CAnal 6-2638.

During the course of the meeting at Holzman's office Burns gave Holzman his Greenwood Lake telephone number, code number 914, GR 7-2439. The telephone number 914, GR 7-2439 checked to the subscriber Nancy Granello, Lakelands, Greenwood Lake.

Nancy Granello is the wife of Salvatore Grannello, alias Sally Burns.

On Tuesday, June 23, 1964, Holzman again met with Salvatore Granello-Sally Burns at his New York office. At that time Burns asked Holzman for $12,500 for the family, and he told Holzman that Holzman should make a $5,000 down payment by that coming Friday.

He told Holzman, "You can't keep stalling." And he advised Holzman, "If you don't want to make a deal with them I'll bow out."

Holzman told Granello that he would let him know by Friday or the latest Monday.

On Friday, June 26, Dino Conte called Drutman, an employee of Holzman's at Holzman's office in New York

and told Drutman that Irving made an appointment and didn't keep it and that is no way to act.

On Monday, June 29, Holzman called Granello and told Granello that he wasn't going to give any money to the family and he wasn't going to give Granello any part of his business.

Granello told Holzman, "Okay, buddy, I'm bowing out. Now you're on your own."

On Tuesday, June 30, Delores Billing who is the married daughter of Irving Holzman received a telephone call at her home. Her telephone number is OV-1-0271. The call was received at approximately 10:20 a.m.

The caller said to Delores Billing, "Delores, if your father doesn't cooperate we'll come to Sylvia Lane and kick your fucking pregnant belly in."

Holzman's daughter resides with her husband, Ronald Billing at 65 Sylvia Lane, Plainview and she is presently pregnant.

During the course of this investigation I spoke with Joseph Albino who is a business associate of Irving Holzman. Both Holzman and Albino told me that they knew Salvatore Barbella also known as Rocco Barbella, also known as Rocky Graziano.

Albino said that he entered Mercy Hospital on Thursday, June 18, 1964, for an operation. He said that on Tuesday, June 23, 1964, he received a telephone call at Mercy Hospital in Rockville Centre, Nassau County, New York, from Rocky Graziano.

Graziano said to him, "I met a guy on the street in New York who walked up to me and said, 'Your cousin is in the hospital.'"

Graziano asked Albino if he could come to see him in the hospital. And he also said to Albino, "I understand your partner, Irv, and you are having a little trouble.

"I can't talk to you on the phone. Can you read between the lines? Can I come up to see you?"

Appendix B

Albino told Graziano that he could come to see him at Mercy Hospital.

Graziano, acording to Albino, didn't come to see him in the hospital, but on Sunday, June 28, Graziano during the morning stopped at Albino's home in West Hempstead.

Albino told me that Graziano said to him that he Graziano was sitting at a table with guys the other day and these guys were talking rough. "They said they were going to hurt your partner, Irv, and you."

Graziano said to Albino, "I told them you were my cousin and that they shouldn't hurt you." Graziano then asked Albino, "What did you do to aggravate them? You must have done something."

Albino told Graziano at that time that he had nothing to do with Holzman's business in New York; that he was only his partner in Nassau County and in other parts of Long Island.

Graziano then asked him, "What did Irving do to them?" At that point Albino told me that he told Graziano that Sally Burns wanted $25,000 in cash from Holzman for the family and 25 per-cent of his business.

At that point Albino said Graziano said to him, "Don't take sides. If you're asked you stay neutral. Don't worry. You're not going to get hurt."

At the end of the conversation Graziano said to Albino, "The guys want to know an answer. Tell him the guys are waiting for an answer."

In regard to Robert Luttman and in addition to the testimony that I've previously given with regard to Luttman I wish to state that Holzman told me that approximately seven months ago he was engaged in a conversation with Luttman about women; and during the course of this conversation Luttman indicated to Holzman that he was being kept by a woman who gave him thousand-dollar bills as spending money.

Holzman said to me that during the course of this conversation with Luttman he made up a story which he told Luttman that he, Holzman, was keeping company with a Copacabana chorus girl named Joyce.

Holzman told me that he didn't know any Copacabana chorus girls, let alone one named Joyce, and that he wasn't keeping company with any woman.

He said that he made this story up during the course of his conversation with Luttman. Holzman further stated that at the time of his meeting with Salvatore Granello alias Sally Burns on June 15, 1964 at his business in New York City Burns said to him, "I did you a favor. I know a shylock who works at the Copacabana and I told him to tell Joyce to forget you because you're a married man."

Holzman stated to me that this information couldn't have been given to Burns by anyone other than Luttman because Luttman was the only one present when he made this statement.

On June 30, 1964, Detective Fred Pawel and Detective Thomas Costello of the Nassau County Police Department assigned to the District Attorney's office, were in Patrissy's Restaurant.

On that occasion they observed Salvatore Granello alias Sally Burns in the bar of that restaurant. During the course of this surveillance of Salvatore Granello alias Sally Burns, Burns used two public telephones.

The telephone numbers of these two public telephones are CA 6-8509 and CA 6-8854. The telephone number CAnal 6-8854 is listed to Patrissy's Restaurant, 98 Kenmare Street, New York County, New York.

I wish to correct for the record, your Honor, I had earlier said that Salvatore Granello alias Sally Burns was presently under indictment charged with rape as a felony.

On July 19, 1963, that indictment was dismissed and I was in error when I told you that the indictment was pending.

Appendix B

On July 17, 1940, Granello was arrested by the State Police, Trenton, New Jersey, and charged as a disorderly person and received a sentence of ten days.

On October 6, 1940, he was arrested in Manhattan for assault and robbery and the final disposition of that case was a conviction for assault in the third degree.

On January 29, 1949 he was arrested in New York City and charged with violation of the Selective Service Laws and prosecution was denied by the federal authorities thereafter.

On July 25, 1947, he was arrested in Manhattan and charged with Grand Larceny. That charge was discharged in Manhattan Felony Court.

On January 14, 1959 he was arrested in Brooklyn and charged with 887 of the Code of Criminal Procedure, subdivision 1, vagrancy, and that charge was dismissed.

He is presently under indictment as I've previously testified and charged with income tax evasion.

On this indictment his co-defendant is one George Levine. George Levine is the stepfather of Rocky Graziano. Joseph Albino informed me that Graziano is the Godfather of Granello's youngest child, a daughter.

Mr. Levy: Your Honor, on the affidavit of Norman J. Levy, Assistant District Attorney, and the sworn testimony of Norman J. Levy before your Honor, the People make application to intercept and record all telephone communications over a telephone instrument bearing telephone number 212-LW-4-2523. This telephone instrument is located at 252 West 43rd Street, New York County, New York.

The subscriber of that telephone is the Headline Bar which is located at 252 West 43rd Street, New York County, New York.

The basis of the People's application, your Honor, is the affidavit by Norman J. Levy that is before you and the sworn testimony of Norman J. Levy which you have heard.

Appendix B

The Court: Mr. Levy, have you been trying to verify whether the daughter of Holzman was in fact threatened?

Mr. Levy: Your Honor, Detective John Skuzenski of the Nassau County Police Department assigned to the District Attorney's Squad interviewed Mrs. Delores Billing at her home on Sylvia Lane yesterday and the facts that I testified to before your Honor were stated to Detective Skuzenski by Mrs. Billing.

The District Attorney's office and the Nassau County Police Department are working on an investigation to identify the caller.

The Court: At the present time have you been able to get any clue which would lead you definitely to the caller?

Mr. Levy: We have not, your Honor.

The Court: You feel as though this tap will assist you in that quest?

Mr. Levy: Yes, your Honor.

The Court: From your experience over the years do you feel that there is reasonable ground to believe that evidence of crime may be obtained by intercepting messages over this telephone?

Mr. Levy: Yes, your Honor. This telephone has been used by Salvatore Granello alias Sally Burns in telephone conversations with the complainant, Irving Holzman, in regard to the demand for $25,000 and 25 per-cent of his business.

The Court: So that in addition to the alleged extortion you are faced here with the threats of violence and physical harm to innocent people?

Mr. Levy: Yes, your Honor, and the investigation regarding the assault on Mrs. Ruth Holzman at her home in Nassau County as well as the threatening telephone call to Mrs. Billing.

The Court: I am satisfied that there is reasonable ground for granting your application.

Appendix B

The Wire Tap Order

COUNTY COURT

NASSAU COUNTY

In the Matter of the Application of *Norman J. Levy*,* an Assistant District Attorney of the County of Nassau,

for

an ORDER FOR INTERCEPTION OF CERTAIN TELEPHONE COMMUNICATIONS,
212 LW 4-2523.

Upon the annexed petition of *Norman J. Levy* and the sworn testimony of *Norman J. Levy* there is reasonable ground to believe that evidence of crime may be obtained by intercepting telephone communications being transmitted over telephone instrument bearing telephone number *212 LW 4-2523* located at *255 West 43rd Street, New York, County*, New York, it is

ORDERED that under and pursuant to the provisions of Article I, Section 12, of the Constitution of the State of New York and the statutes relating thereto, and under and pursuant to the provisions of Section 813-a of the Code of Criminal Procedure of the State of New York and the statutes relating thereto, the District Attorney of Nassau County, and the said *Norman J. Levy* as an Assistant District Attorney of Nassau County, and any all persons employed or assigned to the control and direc-

* This is a form Order, and the filled in blanks are designated by italics.

tion of the District Attorney of Nassau County and the said *Norman J. Levy* be, and they hereby are, authorized and empowered to intercept and record all telephone communications made by and to *Salvatore Granello, Dino Conte* and any and all other persons communicating by incoming and outgoing calls over the telephone located at *255 West 43rd Street, New York County, New York,* now designated as *212 LW 4-2523* and by whatsoever number the said telephone and telephone line may be hereafter designated, and it is further

ORDERED, that the District Attorney of Nassau County and the said *Norman J. Levy* as an Assistant District Attorney of Nassau County, or their duly authorized agent, or agents, be, and they hereby are, authorized and empowered to cut, break, tap, and make connection with any and all wires leading to and from said telephone instrument that the said District Attorney of Nassau County or said *Norman J. Levy,* or their agents may deem reasonably necessary to intercept telephone communications transmitted over the said wire and to do all things necessary to permit the communications being transmitted over said telephone instrument to be intercepted under and pursuant to the provisions of this order; and it is further

ORDERED, that this order shall be effective and in force until *the 29th day of August, 1964.*

Dated: Mineola, New York
July 1, 1964.

HAROLD M. SPITZER
County Judge of Nassau County

APPENDIX C

Stenographic Transcriptions of the Two Wiretapped Conversations to Which the Petitioner Was a Party, the Original Tape Recordings of Which Were Received in Evidence Against the Petitioner

RB 2-27 #8A DJW
7-3-64—7-5-64—1800-1015
approx. 137-306

RCO-5 R1

A Headline Lounge.
1 Dino, please.
A Sure.
2 Hello.
1 Yeh, captain.
2 What's happening?
1 What's the good word?
2 Nothing.
1 Huh?
2 Nothing,—
1 What happened?
2 —nothing.
1 Well, he ranted and raved today.
2 Yeh.
1 He told me—uh, he didn't tell me. He told—uh, Dave come over and, uh, he told us he told the family he was talking to Sally on the phone and he slammed up the phone on him.
2 Sally slammed the phone on him?
1 No, Holzman slammed the phone up on Sally.
2 Yeh.
1 And he threatened Joey.
2 He threatened Joey?
1 Yeh.
2 Naw, he didn't.
1 He said he threatened to do something to hurt Joey on 111th Street, and, uh, Joey's in the hospital now getting, having a hernia operation.

2 Naw, you see, uh, this is what Holzman said; that Bob went in there and that Bob told him that, "I don't want to give Sally Burns fifty per-cent of my route." And there was too much loose talk where it was going back. The whole thing was handled very bad.

1 Yeh, well, I told you that from the beginning, D.

2 Well, we're out of it. I'm, I don't want to discuss it no more. I don't want to have nothing to do with it.

Forget about it, that's all. I don't want to have nothing to do with it. Let them, uh, you know, whatever happens let it happen, 'cause I don't want to have nothing to do with it, 'cause who knows what's going to happen now. So, that's that. See what happens.

1 So he says, uh, now that, uh you know why should I get this fucking deal and fucking. What's with this thing with Sally Burns. Fuck him."

2 Yeh. Well, that don't mean nothing.

1 He had different things about Joey. He says, "I'm going to tell Joey to go to the District Attorney when he comes out because he threatened him," threatened he was going to, going to hurt Joey for some reason. I don't know what the fuck he said that about Joey for.

2 Who?

1 Sally.

2 Sally didn't say that.

1 Yeh. He says, he says he threatened Joey over the phone.

2 No, he didn't. He's full of shit.

1. And he says he slammed up the phone on him.

2 Maybe he did. I don't know. Maybe he did. Maybe Sally did threaten him. I don't know. Who knows.

1 What did Joey do?

2 Huh?

1 What did Joey do?

2 I have no idea. I don't know what, uh, he's going to do. He said forget about it. It's all over, that's all. We took the shot and that's—

Appendix C

1 Yeh.

2 —the end of it, that's all. Forget about it. It's nothing to discuss no more. Took a shot and it didn't work out; that's all. What's the hell; going to hurt people for something that didn't work out? Forget about it. That's the whole thing. That's all. Tell Bob to drop it; forget about it. I don't want to have nothing to do with it no more. It's handled bad and that's all. Took the shot and it didn't work, that's all.

1 Yeh.

2 Let him forget about it now.

1 Yeh.

2 That's all. That's the best thing now. Why get in trouble now? After didn't gain nothing out of it, so—

1 Yeh.

2 So let it go now.

1 Yeh, that's the best thing. That's what I told you that night to forget about it.

2 Yeh. Well, now it's all over—

1 'Cause I knew the fucking man was going to do that you know?

2 Yeh, well.

1 Especially being that it started the way it did, you know. It didn't pay.

2 Well, listen that's all.

1 Thank God he didn't go out there, that's all.

2 Yeh, probably.

1 'Cause he would have wound up in jail. What else is doing? How's business?

2 Well, it's all right. Not bad.

1 No problems?

2 No.

1 Yeh. Where's—Oh, uh, there's no question McGloyne's still alive. He's over here with his whole fucking gang of kids.

2 Yeh, huh?

Appendix C

1 Yeh, he's putting them on the fucking rides here. So I got to hide in the office here so he don't fucking capture me.

2 Hm.

1 'Cause if he saw me—And, uh, I got to, I got to keep ducking him, you know, hide so he don't fucking capture me here.

1 'Cause I didn't even say nothing to him. I kept walking. I looked at him. He looked at me and I just kept fucking walking, you know. But he's got, he's got a little hat on him. He's got, well, he's got at least four kids with him walking around there like a proud poppa.

2 Yeh. All right, that's all. See what happens. Whatever happens, happens.

1 All right, tiger.

2 Yeh. Tell Bob to drop this now. Now, let's not have, you know, not to keep on talking about it and everything.

1 Oh, no, there's nothing. I, I told him it's all over, forget about it, nothing to do. Shouldn't happen.

2 Well, he didn't fire Bob?

1 No, he didn't hear nothing today. But, uh, he wasn't in the office when, uh, when he came in he wasn't in the office; probably still out at his house.

2 Yeh.

1 So, uh, he didn't see him, you know.

2 Oh, he didn't go in today, Holzman?

1 No, he just stayed in the house.

2 Hum. Well, who knows.

1 So, uh, he didn't see him yet to—so, I don't know, you know, he didn't see him to get the good news or what.

2 Huh?

1 I don't know it's 'cause he didn't go in, you know.

2 Yeh.

1 Maybe he was afraid to go in and, I don't know, give him the good news, but he—I saw him before I came over here.

Appendix C

2 Well, who did he tell he slammed the phone down on Sally?

1 This morning he told, uh, Dave.

2 Uh, huh.

1 He was telling him he's not supposed to phone him like that. I slammed the fucking phone. I don't talk to a fucking animal like that.

2 Yeh, well, it's best to forget about it; that's all. It was handled very badly and that's it, that's all.

1. Yeh.

2 See, actually, you know, nobody should have known about it because there—you know, Sally fells definitely there was some way this guy knew that it was him, you know, handling the whole thing.

1 It was who?

2 That it was Sally, 'cause he told him that he knew, you know, that it was Sally.

1 That he knew it was Sally?

2 Yeh.

1 Well, he'd have to a fucking idiot to really actually not to surmise it.

2 No, he told him that he was told. He says, "I know it's you. I was told. I know where you're getting the information."

1 Well, he was—that I knew all along. I—

2 Well, this is what he told him.

1 I knew the fucking man knew this all along. This I knew right along. I told you that. There's no question about it. He knew I was telling him things that was going on.

2 No, he didn't mean you.

1 Sure he meant me.

2 No, he didn't mean you.

1 Well, who did he mean?

2 No—he—I don't know. He didn't mean you.

1 Huh?

2 He didn't mean you.

Appendix C

1 He didn't mean me that was telling the—

2 No.

1 —information?

2 No.

1 Well, who did he mean?

2 Well, he doesn't, he didn't mean that information there.

1 Huh?

2 He didn't mean that. I don't know who he meant, because—but I know he didn't mean you.

1 In reference to what?

2 I don't know; something else. Aw, forget about it. The whole thing is done with now.

1 Well, you're not, you're not explaining it to me. Why don't you explain it to me what you're, what you're talking about.

2 No. He seems to have known something that, uh—aw it doesn't make any difference.

1 Known what? What could he have known?

2 He knew something. I don't know how he found out, but, uh—

1 First of all, the man would have to be a fucking idiot, don't you understand?

2 Yeh.

1 The man from the beginning kept roaring, "Who put this fucking man on me? Who is this man to come in here and tell me about Harold Thompson, about this guy, about that guy? Who put this fucking man on me?" This was his ranting and raving from the beginning: "Somebody put this fucking man on me, that he's doing this—"

2 Well—

1 "—that he's making the move," he's raring and raving. He was, he told Dave, "This fucking man tells me, 'Nobody goes as far as you do in this business unless he's with somebody.' He says, 'Can you imagine this fucking

bum telling me this to my face? Nobody can go as far in this business on your own ingenuity unless you're with somebody.' He says, 'He comes out and tell me this to,'" his face.

2 Well—

1 Don't you see the fucking game this guy plays?

2 Well—

1 I told you this from the beginning that it was—I told you what, what should have have been fucking done in the beginning. If it would have been handled the way I told you in the fucking beginning, it would have been done and it would have been over with now.

2 Well, it's—forget about it.

1 First he wanted $5,000. Then he wanted, uh, 25,000. Then he wanted twelve-five. He was fucking ranting and raving. He was fucking ranting and raving.

2 Well, what are you going to do. The best thing is to forget about it now. Best thing is to forget about it. That's the whole best thing.

1 But you see you have to see that, uh, the man, that, uh, you know Holzman has to be a fucking complete fucking moron—

2 Yeh.

1 —not, not to surmise what was going on.

2 Well—

1 You know the way this man came out with things. You know he came out with things the wrong way, Dino, I told you that.

2 Well, listen, you can't tell him what to do so—

1 Well, I mean, I told him things and he went over there and he said it word for word practically. He said it word for word. He said it word for word about Joey. He said about that fucking broad in the Copa; instead of bringing in the fucking situation with the shylock like I told him to, instead of bringing in the situation, bringing in an outside element like I told him to. And he was, you know, to

straighten it out, instead of just walking in there and, uh, telling the fucking man that anybody as big as he is, nobody gets as big as he is in this business unless he's with somebody or he don't last. You can't make a statement like that.

2 Well—

1 Well, don't—wouldn't the guy have to be a fucking moron, Dino?

2 I don't know.

1 This is the same as it was with Kinto's troubles, straightening this out, straightening that. You's have to be a fucking—like these kids on these rides out here not to know that.

2 Yeh, but, see now, it's a it's a bad situation. Oh, well, forget about it. Look—

1 Of course it's a bad situation now. It's a—

2 Now you got to drop the whole thing.

1 Huh?

2 You go to drop the whole thing. It's the best thing, you know. Tell him to forget about it, that's all. It's all over.

1 Well, what I would do—of course, the man, you know, uh, can do what he wants. If he feels it's dead, it's dead.

2 Naw, it's a dead issue now.

1 But what I would do is maybe wait a month—

2 Naw, naw, the ber—don't, don't even want to, uh, he doesn't want to even go through with it; discuss it no more. You know. That's the best thing. Because, uh, it was handled so badly that it's uh, no good no more. It's you can't do nothing no more.

1 Yeh. Well, it wasn't handled by me badly, Dino.

2 No. Who's saying that? But, uh, but, uh, you know, he says forget about it. So the best thing is forget about it, huh.

1 The fucking information I brought over there was all correct, so, uh, there was nothing handled by me badly.

2 No.

1 You understand?

2 But he's not talking—

1 I brought, I brought the man over a fucking shot for you and for him, so, I mean there's nothing to say that, uh, that, uh, what I did was, uh, inaccurate or I did things stupid.

2 No, not you.

1 So the man's got nobody to blame but himself, Dino, because, uh, there was nothing inaccurate that I brought to the man. The only thing is he presented it wrong and, uh—

2 Yeh, he knows that. He realizes that. He realizes it. He knows it. He knows that it's wrong. That's all. So, see what happens. Who is that, uh? Uh, well, whatever happens, happens; that's all. Best thing is to forget about it now, you know. This guy running to Cahn and everything, you know—

1 Yeh.

2 —it's no good, you know.

1 Yeh. Well, I knew all that was going to happen.

2 Yeh. Well, well, let him go to Cahn. Because there's nothing they can do 'cause Sally's forgetting about it.

1 Yeh.

2 He's got nothing to do with it no more; that's all. You know—

1 I—

2—I thought he would, he would, you know, become ranting and raving and everything, but he's not. He says, "Forget about it. It happened, it happened."

1 Yeh.

2 That's all.

1 The only thing is, uh, tell him, uh, I don't know what transpired with Joey, but whatever the story was the way he sounded that, uh, Sally threatened Joey over the phone. He threatened to jump him on 111th Street, something about 111th Street uptown, and, uh, I know he's got a joint

up there on 111th Street. He's got a box in a joint up there. Now, I don't know what it was about, but, uh, uh, Joey just went into the hospital on, for a hernia operation. He told him that he said, he told Dave that, uh, uh, that he said you know while Dave was there that's he's going to, uh, go see Joey and tell Joey to go to the District Attorney's office; he was threatened by this guy. So I don't know. Maybe he's liable to talk fucking Joey into doing it, but, uh, I don't know what transpired between them.

2 Naw, forget about it. The whole thing is forget about it, you know. Just stay away from the whole thing.

1 I don't know what transpired between him and Sally.

2 I don't know either. Best thing is to forget about it. That's the best thing right now, you know, I mean 'cause it was, it's all over. He says—no—he went, he went away. He says, "Look, we took a shot and—

1 Yeh.

2 —that was it, you know."

1 Where did he go up to Greenwood Lake?

2 I don't know. I don't know where he went. It's all over with.

1 Well—

2 Forget about it.

1 —as long as he don't think that there was anything, uh, stupid that, uh, was done through us, that's all.

2 Now, he, he said to forget about it and that's it, you know.

1 That's the only thing. Uh, you know, I don't want him to think that, uh, that, uh stupid things done through us.

2 Naw.

1 It wasn't. Everything was accurate.

2 Oh, he knows that. That he knows. Uh, it's just that, uh, he handled it bad on his own, that's all. He said it yesterday. He said, "Look, if I couldn't handle it,"

he says, uh, "it was my fault," that's all. And, uh, what, whatever— He says, "Whatever's happened, happened, that's all." He says, "Maybe it's for the best. Maybe I would have got in—" He says, "Maybe I would have got in trouble with this guy," you know.

1 Yeh.

2 So, that's it, you know.

1 All right.

2 But, uh, I'll tell you this. I know that, uh, some other people interested in this guy.

1 Yeh.

2 This I'll tell you for sure. So—

1 Well, let him deal with them then.

2 Well, that's what's going to happen.

1 See what they have to say.

2 That's what'll happen. That's, that's the eventual outcome.

1 See if they do it right,—

2 So—

1 —right?

2 Yeh. Maybe they'll be more successful.

1 Maybe they be more successful if they make a right move.

2 Yeh, all right. 1—All right, Dino. 2—All right, I'll see you, Tom. 1—Yeh. 2—So long. 1—I'll see you next week probably. I'll come in the city. 2—All right. 1—All right, kid.

RB 2-27
480-818 #8BDJW (Same as reel 8A)

A Headliner.

1 Dino, please.

A Dino? Dino.

2 Hello.

Appendix C

1 What's happening, anything?

2 No, no, it's quiet.

1 Yeh.

2 What's doing?

1 Oh, it's jammed over here.

2 Yeh, huh?

1 Oh, what a fucking day. What a day.

2 Well—

1 Been like this since twelve o'clock noon.

2 Yeh, huh?

1 And it, it broke a little bit about seven to eight, you know. I guess they were eating. Now it's fucking jam packed here again.

2 Sure.

1 Sure, today and tomorrow some fucking days.

2 Well, well, that'll be—It's a hell of a thing over there what he's got there.

1 But then at the—but, uh, then uh, you know, the kids they go, in this area they go to camp, you know they send them to camp and all that shit.

2 Yeh.

1 So, uh, uh, he says, you know, the rest of the summer is basically the, just the weekends, you know. But the weekdays aren't too much, 'cause a lot of kids—then a lot of the people out this way, you know Douglastown and, uh, Bayside, they go away for vacations, you know.

2 Yeh.

1 They go to the mountains and all that fucking shit.

2 Yeh.

1 You know, two weeks here, two week there. That cuts it down. It's a fantastic fucking weekend here.

2 Sure.

1 But I imagine you, you're going to feel it in the city a lot of people go away.

2 Naw, it's dead; dead last night.

1 Oh, was dead last night?

2 Yeh.

1 Yeh, a lot of them go away. That Fourth of July weekend knock your brains out.

2 Plus that Goldie and the Gingerbreads opened up at the Wagon Wheel there.

1 Oh, did they?

2 Yes.

1 Yeh. I thought they weren't going to play over there.

2 Well, that's where they are. So, that's that. Well, see what happens.

1 Yeh. That'll really knock the jock off 'em.

2 Well, sure.

1 Who was that that answered the phone? Murray?

2 Yeh. Uh, no, Bobby Greco.

1 Oh, yeh. How's Murray?

2 He's all right, took off last night.

1 Took off?

2 Yeh.

1 What the fuck is he taking off on Friday?

2 Well, he's the boss now.

1 Oh, he could afford to do that now, huh?

2 Now, he could do that. Well, you got to let him be the boss, that's all. That's the only thing.

1 That's all you got to do, "Is this all right, Murray? What do you think of this?" Then you go for the eyeballs, right?

2 Yeh, yeh, that's what you got to do with him.

1 "Is this all right, boss?" All right.

2 Yeh, that's what you got to do with him. That's the only answer.

1 I saw a thing in the paper there about that Sweet Chariot, about the, uh, the people that owned the Sweet Chariot opened up a delicatessen on 49th Street called Mr. Kiska.

2 Yeh.

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1 Did you see that?

2 Yeh, that's where the Rialto was.

1 Where that is?

2 Yeh.

1 Oh, yeh?

2 Um, hum.

1 Oh, the Rialto's out altogether now, huh?

2 Yeh, so's Mattie's Towncrest.

1 Oh, the Towncrest is out?

2 Yeh.

1 Yeh?

2 Well, he got a thirty-day injunction.

1 Yeh, I thought I saw that. I passed there last week. I thought I saw it open.

2 It was open but he got a thirty-day injunction.

1 What about the Casino and that?

2 Well, that they didn't get to. Scotti went up to Hofstedder and told him that Matty was a big Mafia man and they went on Scotti's word.

1 Yeh.

2 And they cancelled the license.

1 Yeh, that's what the bitch about the fucking liquor license. No other business in the fucking world could you do that, see.

2 That's right, yeh, just on his say-so.

1 Meat markets and everything couldn't do that, but that fucking liquor license, forget about it.

2 He won, he won. He beat them in everything. He won all the battles, but he lost the war. It's the old story

1 That's right, that's the case.

2 Well, there was nothing he could do about it. There was no— This guy was out to get him and that was it, out to—

1 They can give you a, they can give you one of a million excuses to cancel a liquor license.

2 Uh.

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1 That's all they got to do is want to get on you, that's why I say this fucking business.

2 Uh, that's all he did was go up there and tell them he was a mafia man, no proof, no nothing, and that was it, and he blew the—well, blew the license. So, that's that. That is that. That's what happens to you. Nothing you can do about it.

1 Well, he don't have to worry.

2 Naw.

1 He must have a few dollars, huh?

2 Yeh, plus the, the other joints'll run you know.

1 Yeh, sure, they'll run.

2 He's starting—

1 Maybe he'll let his brother run them and get out of town.

2 No, he's going to, he's going to start buying a few more now and just keep them, you know.

1 Yeh.

2 Till things cool down he says, and then later on, "I'll, I'll won't be on the scene no more, that's all."

1 Yeh.

2 "I won't be. It's only me, you know." See, they want, wanted to knock off the Towncrest because that was like a symbol there—

1 Yeh.

2 —Matty's Towncrest. And that's it, that will be it.

1 Geez, you know what's a nice-looking place, that Golden Horn.

2 Yeh.

1 It's a pretty looking place when you pass it. Is he doing any business in there?

2 Well, I don't know.

1 It's pretty to pass. They got it lit up nice, you know.

2 Yeh, yeh.

1 They got, uh, a nice attraction in the window there you know.

2 Yeh. Well, he put belly dancing there now.

1 Oh, he's got the belly dancing there, huh?

2 Yeh, yeh, yeh. Well—

1 Geez, you know, what's funny, I meet so many customers from the, uh, Town and Country Club in here.

2 Oh, yeh?

1 Yeh. Either her or next door at the driving range, you know?

2 Oh, sure.

1 So many fucking people come in, customers, you know, that must live out here, in Great Neck, or Bayside—

2 Yeh.

1 —right around the area here. Yeh, I met so many of them next door today.

2 Listen, find a victim over there, will you?

1 Yeh, yeh, I'll tell you there's a lot of fucking Cadillacs pulling out of this place.

2 Well, find one. Jesus, I'm starving over here.

1 Pulling out of this fucking driveway here.

2 Find a victim there.

1 That's for sure.

2 Sure, we got to find a victim. Now, we, we lost Holzman to now we got to find another victim. Find somebody else out there.

1 Well, we'll see what else comes up.

2 Well, I got something coming up pretty soon. See what happens. Maybe I can retire things go right in the next few weeks.

1 Well, just be careful now, that's all, be fucking careful.

2 Well, see what happens.

1 That's the only thing I want you to do.

2 Well—

1 Don't take no fucking wacko chances here.

2 Aw, there's no chance to take.

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1 How's Bobby? Is Bobby still over there?

2 Yeh, but, uh, I'm not, uh, dealing with them no more. I got a new, uh, crew here.

1 Yeh.

2 Yeh. Older, more experienced in the field of operations. See, you got to form a unit just like they have in the, you know, like the special forces in the Army, you know?

That's what you go to do. You got to form a unit you know with—

1 Yeh.

2 —with, uh, with, uh, walkie talkie and everything, the whole thing.

So—I seen that picture, the Asphalt Jungle there with the great jewel robbery there. So maybe we'll come across something like that. But we'll see what happens.

Either we'll make the papers or, or we'll—next episode we'll make the papers all right. We'll make the newsreel. Gabe Pressman will be interviewing everybody in it, like he did in the last time.

1 I had a—I had a thing a guy was talking to me about. Uh, when I come over I'll tell you about it.

2 It's got to be substantial though, you know. Listen, when the guy told me about this thing that time on Park Avenue, it didn't make any sense but—

1 You know I had to laugh at myself. I was in the store there, the drug store, I saw a picture of Max Factor. Geez, I wonder if he's got any money.

2 Heh, heh.

1 He's he's pretty big in that business, too, you know.

2 Yeh.

1 When I come over I'll tell you about it, what this guy told me. The—see what, uh—

2 What's our boy, Irving, doing? Is he, is he—He's not leaving the house, huh?

1 No, he's still in the house.

2 Yeh.

Appendix C

1 H's fucking terrified.

2 He's not coming to New York, huh?

1 No, he won't, he probably won't for a while—

2 Well—

1 —but, uh, that'll wear off. He'll be back in action.

2 Yeh, yeh. Meanwhile, he has to stay cooped up there.

1 Yeh, they're all out there. There's the daughter, son. They're all, uh, living out there.

2 Well, listen, maybe he's better off, you know.

1 He closed the, uh, he closed the New York office down Friday, yesterday—

2 Yeh.

1 Nobody over there, but he—

2 Well, what is he going to do with the Great Neck office?

1 I don't know what he's going to do with it, going to get rid of Nick.

2 And who's Nick?

1 Nick is the guy that, uh, (Indistinguishable) kid is out there, but he really doesn't know, but he's the only one that's been going in. The kid has been going in.

2 Well, maybe, maybe he'll, he'll want to call up anyhow, Holzman. Maybe he'll want to speak to somebody, Irving. So, see what—

1 Well, you never know. He'll be left alone for a while. See what develops with him, right?

2 Yeh. Well, I know what's going to develop so—

1 The man can't, uh, the man can't, uh, stay there forever, right?

2 Yeh. Well, he can never come into New York again though.

1 He's got to come out. He's got to function. He got to make—he's got to keep the, the route functioning. If he don't, if he doesn't he loses the fucking route. If he can't make these tremendous payments on his fucking route, you know, he'll lose the route.

2 He can never walk into New York again, he knows that.

1 Well—

2 The minute Lyn Durant is out. You know he's in, he's in Chicago now.

1 Who, Lyn Durant?

2 Yeh, but somebody, the other fellow's in Chicago, Sally.

1 He went to Chicago?

2 Yeh.

1 Yeh.

2 He left this morning. Now this guy is in for a little activity. He didn't think the—But, please, don't say nothing to even Bob no more.

1 No, no.

2 Because Bob said something to this guy and it came back to Sally and—

1 Said what?

2 I don't know. Sally's blowing his fucking top. Started screaming at me and everything. He says—I says, "Look," says, I told him, I says "Tommy did the best." He says, "Yeh," he says, "but there, there was a leak from one of the other people." Either Dave or somebody must have caught a hint of something. Or Bob, you know. You never can tell.

1 I told you before, Dino, the man would of had to been a fucking moron not to know what was going on, the way it was done. Don't you understand? Now, naturally when, uh, naturally when, uh, when Holzman mentioned to Bob that, uh, this man wanted to come in as a partner, "in my operations," you understand, he probably told him, "Well, you're not coming, he's not coming in a partner in my business."

2 Well, that's what I told him.

1 You understand? But what could he say? Dino, could he say, "Yeh, Yeh, uh, Irving, I, I think that that's

a good thing." Are you kidding me? He would of fucking crucified himself.

2 Yeh.

1 He would have crucified himself, because the fucking man has got his phone tapped. He knows the information's coming from him. He knows it's Sally from the fucking beginning. The man knows it. Don't you understand? He'd have to be fucking crazy. How many weeks ago did I come to you and I told you, Sal, Sal—Irving was telling everybody Sally walked in the office Friday—Monday when that event happened—and then after that he says, "If you would of went with me Friday this would have never happened". I told you that.

2 Yeh.

1 He was telling fucking people even though Sally meant it in a way that if people knew that he was with him it wouldn't have happened.

2 Yeh.

1 But he just as much as told him, "Well, I wouldn't, this wouldn't of happened if you went with me. You would of done as I told you".

He was going around telling fucking people that. I told you that two weeks ago, three weeks ago.

2 Well, I tell you one thing: Sally is determined he don't care if he gets pinched he told me. He says, "What are they going to pinch me for?" He says, "Let them pinch me". He says, "I don't care". He says, "Let him, let him go to the FBI and let him go to—"

1 But you fail to realize this is the situation, Dino. The man's not going to give a fucking inch; not an inch. Now—

2 Only if he can't function, Tom.

1 Yeh, only. And what are you going to do if he can't function? He loses the route.

2 Well, but this, this is Sally wants. He wanted to ask you that. He says do you feel that if he lost the route that uh, because uh—He's going all the way. He told me.

1 Well, that's all he's going to do. He's certainly not going to kill the guy, Dino, and uh, if he keeps this guy so terrified that he can't function, that Nick's got to function here, and this guy Red's got to function in New York, then—

2 Red does not function. Red's quitting Monday. Red is quitting Monday. Red ain't functioning in New York.

1 He's quitting?

2 Yeh.

1 Yeh? What makes you say that?

2 I'm telling you, he's quitting.

1 Well, that's that's why I say that's the only thing and now this is what's going to happen and, and you, the man will lose the route, you understand, but he's not going —uh, he won't accomplish anything like this. I, uh, to me this is wrong. I would let things go.

2 Well, no, Sally has these, these four notes from Irving for $25,000 a piece that he has here, you know. I mean, they're the one's due the 1st of July, it's past due already. The other one's due uh, uh, in August, and the other one's due in September, and the other one's due in October. One's past due already. So, uh, see what happens.

1 Four notes on what?

2 I don't know. Personal notes $25,000.

1 Four personal notes totaling $25,000?

2 Totalling $100,000.

1 Well, I don't know, I don't know anything about that.

2 This is how they came up. I don't know.

1 That was that, with that the other business you were talking about? With the, with the Graziano and the, the commercials?

2 No, no, they, they did something else. You know, uh, oh, that he's a partner in. Forget about it. Nobody can ever use that.

1 Yeh, well, I don't know anything about that—

2 Yeah.

1 —but uh, this here to me is uh, to me, is going about it the wrong way, Dino.

2 Well, you can't tell him nothing, Tom. You can't even say nothing. He's going—

1 I mean to terrorize this guy is, is wrong because within two, three months if things go wrong that he can't have the operation going right, and now, uh, he'll lose the fucking route.

Then, uh, then he losses the whole route, Dino. That's not only his deal.

2 Well, you can't tell, I'm telling you the guy went to Chicago this morning. I know what he went there for. This man does never go to Chicago no more 'cause the minute he steps in Chicago he, he gets, somebody'll be waiting for him, put him right back on the plane and send him back to New York.

1 Well, I don't know if it's the right thing.

2 Well, look, whether it's the right thing, whether it isn't the right thing, uh—See, I'll tell you what Sally told him over the phone.

He says, "Listen you cocksucker—" After Irving you know said, "Well, no, my partners don't want you," and this and that.

See, if he blamed it all on his partners.

1 Yeh.

2 He said, "It's not me. It's my partners. They don't want you." So Sally said, "Listen you cocksucker," he says, "I'm telling you now," he says, "you used my name a lot of times. You told people that I beat you for $2,500 with that Gallo business. I did it as a favor" which he did, he straightened it out as a favor.

1 Yeh.

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2 —never got no money for it or anything and I didn't want anything." He says, "But you don't think you're going to use me now." So—and then Sally hung up on him.

1 Yeh, he said that he slammed the phone up on him.

2 Yeh, but it was reversed. Sally—

1 Yeh.

2 That's what's terrorizing him. He told him uh, he says, "I'll guarantee you you can't come to New York." And he meant it.

1 Yeh.

2 And this guy knows he meant it.

1 Yeh.

2 I'm telling you I know this man like a book. You know I've seen him do things, they've gone wrong with unions and other things, and he's he's backed off and said, you know, see because he wanted me to tell you, you know, well, I, see he doesn't know that I know you.

See, when you were here last night he was around, the other kid was around and Joey was around when I was talking to you over the phone, see.

1 Uh, uh.

2 So he wanted me to tell you just look, we're laying off, that's it, you know, it's none of our business no more.

We, we took a shot and what not, but I—see, I know what, how he is, you know. I know what he's going to do. That's the only thing, the only thing, you know, I don't want, I don't want to see Bob, you know, anything happen to Bob, you know in this whole business here.

1 No, nothing can happen to Bob, see nothing can happen to Bob. The only thing that can happen to Bob is that us, he's go actually he's got fifty percent of his, of Coin-A-Matic route, that uh, the only thing that can happen to Bob is of course he'll try to pressure him more, you know.

2 Well, if he pressures Bob—

1 Because everything that Sally does he's going to blame—If anything happens to Sally, like, say anything happens to Holzman—Now, let's just take a for instance.

Say Holzman went out was hit by a, by a drunken kid tonight, as a hit and run driver, Bob is in, Bob is in Mineola jail tomorrow morning.

1 How do I get outside here?

2 Yeh.

1 He's in Mineola jail tomorrow morning. They'll pick him right up and take him out there, 'cause anything that happens to him she's going to blame Bob right away because they're blaming him now.

You don't know what they're doing to this guy. He can't get his, he can't get his machines moved, Dino. It's it's a fucking pathetic. I feel sorry for him.

2 Yeh.

1 He can't get his fucking machines.

2 Well, maybe we're going to have to go out, uh, maybe, uh, maybe Sally'll have to become his partner, uh, you know, on the surface temporarily.

1 He can't get his fucking machines moved. You know what he's got? He sent some fucking drunk, some guy that used to do work for him before with a station wagon moving machines from bar to bar, you know, switching them in new locations, and that. The fucking National Truck won't touch him. Ronnie was saying, "Fuck him, let him, let his work pile up."

2 Where is this National Truck?

1 They're out here in the, in the back on a lot in back of the Peter Luger's thing.

2 Oh, by Peter Luger's?

1 Yeh.

2 He can't go by Peter Luger's anymore anyhow.

1 They got a—

2 How many trucks do they have?

1 Two.

2 Two.

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1 But then he rents. He's he got two on with the thing but then he rents some of them Hertz things. When they, you know, when they're very busy he rents them by the day.

2 Well, we'll see what happens. All right, I'll let you know next week, uh, I, I, I'll tell you next week. You'll see some big results.

1 But the uh, the only thing I'd say here is that uh, uh, the man, the man won't, is not going to give an inch, I know now.

2 Yeh.

1 And if it's done wrong now you're not going to do anything but, uh, to, but to tie him up so that he'll lose the fucking—he'll lose everything.

2 So what. Let him lose it. Oh, he's going to know that. He's either going to have to know that he's going to lose it or he's got to pay this money that he owes; that's all.

He owes all this money. I mean the guy took the money and he took it in good faith, and they loaned it to him in good faith, no interest, no nothing.

1 He took a loan. Is that the way it's set up?

2 Yeh.

1 Well—

2 He took this money in, in good faith, as friends and now—

1 You know I got these notes here with, wh—with his signature on it. You want them? The $900 worth of Charlie Brown's notes?

2 Yeh, bring them over, too, bring them over. We'll put, put them all in together here.

1 Yeh, I got them, too.

2 Put them in, too.

1 Well, you see he could turn around and, you know, and say that he had collected the money and was giving it to me and I was giving it to Holzman. He could say,

"For your fucking information that money that you were getting, you know, Tommy, wasn't collecting it. I collected it and I gave it to Tommy, or Dino collected it and he gave it to Tommy—

2 Yeh.

1 —and he gave to you."

2 Yeh.

1 Now he got over about $450 of that money so far, see. See maybe something like that could give a break, you know, 'cause otherwise I'll tell you he's crucifying fucking Bob.

2 Well, that's what he got to put a stop to.

1 He's crucifying Bob. He's got everybody shunning him. Nick shuns him. Te fucking mechanics out there, you know, don't tell him nothing, don't say nothing to him. Nick shuns him. The fucking mechanics out there, You see, naturally with me, he accuses me, too, but I got nothing to do with him, you know, but uh, you know Bob's got to fucking live with him. And you know another thing, I had to give Bob $2,500, he tried to lift, he made loans.

See now to show what a cocksucker this guy is him and Bob made loans, uh, him and Bob made loans to juke boxes totalling $3,000. Then Holzman turned around and didn't put the money in the bank.

2 Humm.

1 You understand?

2 Yeh.

1 So—

2 Well, hello, hello. Hello. Yeh, what happened?

1 Yeh, I pressed this incom button—

2 Oh.

1 —and it went off.

1 And he didn't put the money in the bank, see, and he was going to let the notes bounce.

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2 Yeh?

1 You understand? And then he both of them were going to go to court, uh, you know, when the things came up, as the you know issuing the checks with no money in the bank, and he was going to take care of his half. This is what the fucking story was. He was going to take his half as a fifty per-cent partner.

2 Well, I'll tell you.

1 So, the kid's taking an awful fucking, uh, beating, an awful beating, but like I don't want to go and, say to Sally, criticize Sally what he did. You understand?

2 Yeh.

1 But he did do the fucking thing wrong because he said things verbatim to this man that knew they come from Bob, knew it, Dino, believe me. He knew it come right out of his mouth.

2 Well—

1 Now—

2 —Maybe we shouldn't have done it that way and—

1 He knew it come right out of his mouth. That's why he's, that's why he's crucifying this fucking kid now. Now it's all he has to do is if he wants to finish this fucking man in Chicago go down to that fucking National City Bank on 43rd Street and get a copy of them fucking—

2 Chase Manhattan.

1 Chase Manhattan and get a copy of the, you know, you get a photostatic statement.

2 He don't even have to do that, Tom, don't you understand?

1 Well, if he shows him that he won't have to go to nobody else because he'll be fucking finished with the—definitely lose his fucking job.

2 Well—

1 All right, listen, I'll talk it over with you when I see you.

2 Yeh, because he's going all the way with this guy and I don't want, I don't want, I hope I'm hoping this guy just tokenly repays some of that money, you know what I mean, because this way there's no, uh, nothing, no violence or anything, 'cause I know that, I know when this guy made up his mind to do something there's no, uh, there's no more stopping him, 'cause uh, I mean, uh, he went out to Chicago bent on doing something.

And, uh, that's what's going to happen. All right. Listen, maybe I'll see you tomorrow or something—

1 Yeh, I'll be in the city Monday or Tuesday.

2 Yeh, bring something over here so I got my uh, special forces here.

1 Yeh, all right. Let me see if anything comes up. If anything comes up sensible though. It's go to be sensible.

2 Look this is why we're in that daring business, the special forces. We wear the green berets. We do anything risky or non-risky. We got insurance policy floaters we take out.

1 Yeh, all right.

2 All right, I'll see you. So long.

1 Right.